NO. 22171

United States
Court of Appeals
for the Ninth Circuit

FRED H. STEGEMAN and
IONE E. STEGEMAN,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

On Appeal from the United States District Court
for the District of Oregon
HONORABLE Robert C. Belloni, *Judge*

BRIEF OF APPELLEE

SIDNEY I. LEZAK
United States Attorney,
District of Oregon.

JACK G. COLLINS
First Assistant United States Attorney
506 *U. S. Courthouse, Box* 71
Portland, Oregon 97207
Attorneys for Appellee

GANN PUBLISHING CO., PORTLAND, OREGON 1-3-68

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BRIEF OF APPELLEE

JURISDICTIONAL STATEMENT

The jurisdiction of the United States District Court for the District of Oregon was based on 18 U.S.C. 3231. This Court has jurisdiction by virtue of 28 U.S.C. 1291. The indictment charges offenses against the laws of the United States.

STATUTES INVOLVED

18 U.S.C. 152. Concealment of assets; false oaths and claims; bribery

> "Whoever knowingly and fraudulently conceals from the receiver, custodian, trustee, marshal, or other officer of the court charged with the control or custody of property, or from creditors in any bankruptcy proceeding, any property belonging to the estate of a bankrupt; or . . . .
>
> "Whoever, either individually or as an agent or officer of any person or corporation, in contemplation of a bankruptcy proceeding by or against him or any other person or corporation, or with intent to defeat the bankruptcy law, knowingly and fraudulently transfers or conceals any of his property or the property of such other person or corporation; or . . . .
>
> "Shall be fined not more than $5,000 or imprisoned not more than five years, or both . . . "

COUNTER-STATEMENT OF THE CASE

On February 19, 1964, an Indictment in two counts charging violations of 18 USC §152 was filed against defendants Fred and Ione Stegeman in the United States District Court for the District of Oregon. Count I of the Indictment charged defendants with knowingly and fraudulently transferring, concealing and removing from the District of Oregon, in contemplation of bankruptcy proceedings against them, various items of their property. Defendants were charged in Count II of the Indictment with knowingly and fraudulently concealing from creditors and the Trustee of their bankrupt estates certain items of their property in violation of 18 USC §152.

On the date this Indictment was returned, February 19, 1964, defendants were residing at Nelson, British Columbia, Canada. At the instance of the United States, they were extradited from the Dominion of Canada and returned to Portland, Oregon, on December 22, 1966. Defendants were tried before a jury for four days (April 24 - 27, 1967). Defendants elected to rest their respective cases following presentation of the Government's case. They were each found guilty on both counts of the Indictment. On May 24, 1967, the District Court (Honorable Robert C. Belloni) sentenced each defendant on Count I of the Indictment to a term of imprisonment of one year and a fine of $5,000.00 and suspended imposition of sentence upon

Count II of the Indictment and placed defendants on probation for a period of four years, such probation to follow release from the imprisonment imposed on Count I and upon the special condition that defendants cooperate fully with their Trustee in bankruptcy in an effort to locate all the assets of their bankrupt estates, including cash (R. 154) (See Appendix, page 100).

For several years prior to 1960, defendant Fred H. Stegeman, doing business as Fred H. Stegeman and Associates, was engaged in the construction business. During 1958 and 1960 he entered into agreements with the Bureau of Public Roads to construct portions of a highway near Mt. Hood, Oregon, and Whittier Creek, near Mapleton, Oregon. Stegeman underbid one or both of these jobs and incurred equipment failures. By the Spring of 1960, his deteriorating financial position had become apparent. Stegeman had lost his business once before (Tr. 284).

During the Spring, Summer and Fall of 1960, defendants undertook various actions designed to retain for themselves the contract proceeds due from the Bureau of Public Roads and to conceal such proceeds from their creditors. Among these actions were defendants' transfer of real and personal property (including their Buick car, house trailer, Cessna aircraft, equipment and shop) to their long-time employee Wil-

liam Gaubert and his wife; assignment by Fred Stegeman of the proceeds of his two road contracts to William Gaubert; defendants' transfer of their home and its furnishings in Lebanon, Oregon, and other property to their eldest daughter, Lynn Langmack; defendants' changing joint savings accounts with their daughters to accounts in their daughters' name alone (Tr. 197, 198); defendants' establishment of a bank account in the name of Corda Gaubert at the Lane County Bank, Florence, Oregon, and the use of such account to conduct their failing business; defendants' receipt of $36,500.00 in United States currency in late November and early December, 1960, followed by their sudden departure for Nelson, British Columbia, Canada, without their three minor children.

During the fall of 1960, defendants consulted John Boock, an attorney at Albany, Oregon. Prior to trial, defendants waived any claim of privilege by virtue of any lawyer-client relationship to any statements, oral or written, made by themselves to John Boock (R. 9). On the 25th or 27th of November, 1960, defendants had an evening meeting at the home of attorney John Boock (Tr. 278). Their desperate financial difficulties were discussed. Various alternatives, including voluntary and involuntary bankruptcy, were considered. It was at this meeting that the comment was made, "You could leave the country" (Tr. 283, 284). Defendants did leave the country during

December, 1960, and thereafter resided at Nelson, British Columbia, Canada.

Defendants' involuntary bankruptcy proceedings were commenced on December 15, 1960. Defendants learned of these proceedings during January, 1961. They were adjudicated bankrupts on January 18, 1961, and a Trustee appointed on February 17, 1961. Defendants' attorney Morley discussed their bankruptcy with the Trustee's attorney prior to his departure and meeting with defendants in Canada. While in Canada in late March of 1961, attorney Morley discussed with defendants their bankruptcy and other matters. Attorney Merle Long did the same during April or May, 1961. The Trustee's attorney, Walter Pendergrass, made personal demands upon defendants in Canada for the location of their Cessna aircraft and the sum of $36,500.00 in United States currency about April 30, 1962.

Defendants left the United States in late 1960 with, among other things, their 1959 Buick automobile and Glider trailer-house. Defendants' Cessna aircraft was flown from Springfield, Oregon, to Pasco, Washington, and Nelson, British Columbia, Canada, in February and March, 1961. This aircraft was not discovered by the Trustee in Bankruptcy until December, 1962, at Colville, Washington.

On October 27, 1960, defendants purchased two $15,000 cashier's checks in favor of their daughters, Pamela and Marna, with funds received from the Bureau of Public Roads. The $15,000 cashier's check payable to Marna Stegeman was later reduced to another cashier's check in favor of Marna Stegeman on November 10, 1960, in the sum of $11,598.68.[1] During January, 1961, defendants returned these checks from Nelson, British Columbia, Canada, to their eldest daughter, Lynn Langmack, at Albany, Oregon, with directions to deliver them to attorney John Boock. Attorney Boock, after consultation with defendants, deposited these checks in the Albany, Oregon, bank account of an Oregon corporation entitled FIMPS Investment Company (Fred, Ione, Marna and Pamela Stegeman), which attorney Boock had incorporated for this purpose.

Defendants' attorney Boock did not reveal to the Trustee the existence of the sum of $26,598.68, being the proceeds of the two previously-mentioned cashier's checks until after April 1, 1961.

Prior to defendants' departure to Canada, Fred Stegeman left money with his eldest daughter to pay some of his debts. Corda Gaubert, acting for defend-

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[1] Defendants' receipt and disposition of certain funds received from the Bureau of Public Roads is set forth in a chart (Govt. Ex. 4) reproduced in the Apppendix of this Brief, pp. 67a.

ants, transferred the balance of defendants' funds in the Lane County Bank at Florence, Oregon, $4,435, to Lynn Langmack, defendants' eldest daughter, at Albany, Oregon, on December 10, 1960. Lynn Langmack deposited this amount in the special account in her name at the Citizens Bank of Albany, Albany, Oregon, on December 17, 1960. The Trustee did not discover such sum until disclosure of its existence by Albany, Oregon, attorney Merle Long, during the latter part of March, 1961.

Defendants' Oregon attorney, John Boock, received and deposited at Albany, Oregon, on December 12, 1960, a payment to him from Corda Gaubert of approximately $1,000. The Trustee did not discover the existence of this payment until attorney Boock revealed it to the Trustee during the latter part of March, 1961, or in his letter of April 12, 1961 (See Exs. 1-C and 1-N, reproduced at pp. 69 of the Appendix of this Brief.).

On December 13, 1962, Special Agent Price of the Federal Bureau of Investigation was able to locate Ione Stegeman at her mobile trailer home at Kline's Trailer Court, Nelson, British Columbia, Canada. Agent Price, in the company of Corporal Peever of the RCMP, went to her trailer home. They were admitted, and Agent Price then interviewed defendant

Ione Stegeman in the living room of her trailer home. A daughter and baby were present. This interview took place during daylight hours. Corporal Peever remained silent throughout.

Agent Price was in Canada investigating the nature and whereabouts of defendants' property (their Cessna aircraft and $36,500.00 in United States currency had not been discovered by the Trustee). Agent Price was also attempting to learn the circumstances of their departure from the United States and residence in Canada. Although no decision to undertake prosecution had been made, Agent Price advised Mrs. Stegeman that it was being considered. He relayed the opinion of the United States Attorney for Oregon that in the event of such prosecution, she and her husband could be extradited from Canada. Agent Price warned Mrs. Stegeman that she need make no statement to him, that any such statement could be used in a Court of law, and she could consult an attorney. He further advised Mrs. Stegeman that any statement she might make must be completely voluntary on her part and that she might stop the interview at any time. She indicated to Agent Price that she had previously furnished all the information she knew about the matter to an attorney and other men from Oregon. She added, however, that Agent Price might go ahead and ask his questions. The interview was later terminated following Mrs. Stegeman's request.

On February 20, 1963, Agent Price was able to locate Fred H. Stegeman at his place of employment at a plant of Celgar, Limited, near Castlegar, B.C., Canada. Agent Price went to this plant, in the company of an RCMP officer. This officer contacted Stegeman while at work. Stegeman was requested to come to the office of the RCMP at Castlegar for an interview with Agent Price. Agent Price and the RCMP officer then departed. At the conclusion of his work shift, approximately one half hour later, Stegeman came in his own Jeep to the office of the RCMP at Castlegar. Agent Price and Mr. Stegeman were alloted a room at the office.

Agent Price warned Fred Stegeman that he need not make any statements, that any informtion he did furnish could be used against him in a Court of law, and that he had the right to consult an attorney. Agent Price explained the purpose of his interview was to give Stegeman the opportunity to make a full and complete disclosure of all assets and liabilities regarding his bankruptcy (At this time the Trustee had not located the sum of $36,500.00 in United States currency received by the Stegemans shortly before their departure for Canada — the Trustee never located this sum.). Fred Stegeman was further told that this interview must be completely voluntary on his part and that it might be terminated whenever he desired. Stegeman was at liberty to leave at any time and was

so told. The interview lasted about an hour and a half to two hours. No other persons participated in this interview, although other RCMP officers were occasionally about the room on other business.

At the time of these interviews, Fred and Ione Stegeman were not under arrest, subpoena, extradition proceedings or in any way deprived of their freedom. Defendants had obtained the advice of attorneys John Boock, Laurence Morley and Merle Long well prior to their interviews with Agent Price.

At the time of trial, defendants asserted an attorney-client privilege as to any communications by or to them on the part of Lebanon attorney Laurence Morley and Albany attorney Merle Long. The Court sustained defendants' claim as to attorney Long (Tr. 305). The Government limited the evidence which it sought from attorney Morley to a copy of a letter written by attorney Morley to defendants in Canada (Ex. 2-0). This copy had been sent by attorney Morley to the Trustee's attorney, Walter Pendergrass. Following a hearing out of the presence of the jury, the District Court overruled defendants' objections on the grounds of attorney-client privilege as to this copy of attorney Morley's letter. In doing so, the Court stated in part that

> "Mr. Morley in representing his clients, the defendants, had authority to act on their be-

half. He felt that it was to their advantage that Mr. Pendergrass, a third person, receive a copy of the communication. That destroyed the confidential nature of the communication. A mere payment of transportation expenses by the Trustee did not make him co-counsel with Pendergrass. Pendergrass' clients' interest was adverse to that of the defendants. Secondly, there is strong evidence in this case that on that date, April 7, 1961, the defendants were still concealing assets in violation of the law. An attorney's advice about a course of continuing violation of the law is not privileged. This is a close question. Defendants made a very good argument, and they have a record on it. Nothing more need be said."

SUMMARY OF ARGUMENT

I

The District Court was correct in admitting defendants' statements to Special Agent Price. Following hearing as required by *Jackson v. Denno,* 378 US 368 (1963), the District Court found " . . . that without any doubt there was deprivation of freedom of any action for either defendant in this case at the time of the interrogation. In other words, there was no custody situation, and a Motion to exclude the admission is denied . . ." There is substantial evidence to support this finding.

Defendant Ione Stegeman talked with Special Agent Price of the Federal Bureau of Investigation at her mobile trailer home at Kline's Trailer Court, Nelson, British Columbia, Canada, on December 13, 1962. Following work on February 20, 1963, defendant Fred Stegeman came to the office of the Royal Canadian Mounted Police at Castlegar, British Columbia, Canada, and also talked with Agent Price. Defendants object to the use of their statements made to Agent Price on the ground that they did not receive the full four-fold warning required by *Miranda v. Arizona,* 384 US 436, 479 (1966). Agent Price did warn each defendant in the standard manner then given by Special Agents of the FBI to both suspects and persons under arrest, which was held " . . . consistent with the pro-

cedure . . ." delineated in *Miranda v. Arizona,* 384 US 436, 484 (1966). The District Court found that defendants at the time of making their respective statements were not in custody or otherwise deprived of their freedom of action in any significant way. See *Miranda v. Arizona,* 384 US 436, 444, 477 (1966) (Tr. 152-156). Accordingly, the warnings required by *Miranda* were not required.

At the time of making their respective statements, neither defendant was under indictment, arrest, subpoena, or subject to extradition proceedings. At no time did either defendant ask to consult with counsel or to have counsel present. At no time were any tricks, cajolery, threats or violence employed nor do defendants suggest they were.

Ione Stegeman talked with Agent Price in the familiar surroundings of the living room of her trailer house during daylight hours. Agent Price advised her that she need not talk with him, that the information which she might furnish could be used against her in Court, that she had a right to consult an attorney, and that any statements which she did make would have to be voluntary on her part. She was advised she could stop at any time she desired, and on one occasion she responded "Well no, go ahead and ask your questions." This interview took place in the presence of Corporal Charles Peever, RCMP, who remained silent throug-

out. A young girl, whom Agent Price took to be Mrs. Stegeman's daughter was also present, as was a young baby. After a time, Mrs. Stegeman indicated she did not care to furnish further information, and Agent Price and Corporal Peever departed. Mrs. Stegeman was not arrested or taken into custody, nor was it anyone's intention to do so.

Agent Price's purpose in going to Canada was to attempt to locate Mr. and Mrs. Stegeman, to give her an opportunity to make a full and complete disclosure regarding alleged concealment of assets and to advise her there was a possibility of a violation of the National Bankruptcy Act. No decision to undertake prosecution against Mrs. Stegeman had yet been made. Agent Price was attempting to determine the facts respecting the nature and location of defendants' property, portions of which the Trustee in bankruptcy had not yet located (Defendants' Cessna aircraft and the sum of $36,500.00 in United States currency). Agent Price was engaged in an investigation to determine the facts from which a determination might be made as to whether a violation of the laws of the United States had occurred.

This is not in-custody interrogation as encompassed by *Miranda v. Arizona,* 384 US 436 (1966). The evidence is clear and uncontradicted that this was not an incommunicado interrogation in a police-dominated

atmosphere. Mrs. Stegeman was not in custody, nor was she deprived of her freedom of action in any significant way.

On February 20, 1963, Agent Price located Fred Stegeman working at the Celgar plant near Castlegar, British Columbia, Canada. Agent Price at this time continued to be engaged in an investigation of an alleged concealment of funds in regard to a possible violation of the National Bankruptcy Act (The Trustee in bankruptcy had not yet located the sum of $36,500.00 in United States Currency). Agent Price, together with an RCMP officer went to the Celgar plant. That officer located Stegeman who agreed to come to the office of the RCMP at Castlegar to talk with Agent Price after work. He did so.

Following his arrival, Fred Stegeman and Agent Price were given a room in which to talk at the police office. No one else was present although Canadian police officers occasionally passed through the room. Agent Price advised Fred Stegeman that he did not have to make any statements, that any information he did furnish could be used against him in a Court of law, and that he had a right to consult an attorney. This warning again conformed to the standard warning long given by Special Agents of the FBI and ". . . is consistent with the procedure . . ." delineated in *Miranda v. Arizona,* 384 US 436, 484 (1966). Agent

Price advised Fred Stegeman of the purpose of the interview, namely to give him an opportunity to make a full and complete disclosure of all assets and liabilities in regard to his involuntary bankruptcy. Fred Stegeman responded that he was willing to talk to Agent Price and furnish any information. Stegeman was told that he could stop the interview at any time. Fred Stegeman was at liberty to leave at any time and was so told. He was further told that anything he said had to be strictly voluntary on his part. At no time was Fred Stegeman arrested or taken into custody by the Canadian police or anyone else, nor was such action contemplated. No decision to undertake prosecution of Fred Stegeman had then been made.

It is clear that Agent Price's interview of Fred Stegeman was not an incommunicado interrogation in a police-dominated atmosphere. A room at the office of the RCMP at Castlegar, British Columbia, Canada, was made available to them as a matter of courtesy and was used as a more convenient place to discuss these matters than Stegeman's place of employment. Fred Stegeman's statements were volunteered during the course of an investigation to determine whether or not a violation of the National Bankruptcy Act had occurred. The District Court was correct in permitting Agent Price to testify regarding Fred Stegeman's statements to him in Canada on February 20, 1963.

SUMMARY OF ARGUMENT

II

The District Court was correct in rejecting defendants' Requested Instruction No. 15. Defendants suggest they took no direct action in Oregon after learning of their bankruptcy and appointment of a Trustee. There is substantial evidence to the contrary. Defendants further suggest that even after learning of their bankruptcies, the appointment of a Trustee, and his personal demands upon them in Canada, they still had no duty to disclose the nature, location, and value of their property. Defendants argue, as we understand them, that the inability of the Bankruptcy Court to assert personal jurisdiction over them in Canada makes it impossible as a matter of law for them to conceal their property from a Trustee while in Canada. This is not the law.

Once defendants learned of the Trustee's appointment, they had a duty, imposed by Section 7a of the Bankruptcy Act, to disclose their property to him. This duty follows them wherever they may go and wherever their property may be. It does not stop at the Canadian border. Defendants' silence, while in Canada, worked a concealment upon their Trustee in Oregon. Were it otherwise, we should expect all bankrupts to depart with their property for Canada.

SUMMARY OF ARGUMENT

III

The District Court was correct in admitting Government Exhibit 2-0. This exhibit is a copy of a letter, the original of which was sent by attorney Laurence Morley to defendants in Nelson, British Columbia, Canada. Attorney Morley sent this copy to attorney Walter Pendergrass, attorney for the Trustee of the bankrupt estates of the defendants. Defendants objected to the admission of this exhibit upon the ground that it was a confidential communication between attorney (Morley) and clients (Fred and Ione Stegeman). The District Court received testimony and heard argument on this matter out of the presence of the jury. On the morning of the third day of trial, the District Court admitted Exhibit 2-0 in evidence and stated its reasons:

> ". . . Mr. Morley, in representing his clients, the defendants, had authority to act on their behalf. He felt that it was to their advantage that Mr. Pendergrass, a third person, receive a copy of the communication. That destroyed the confidential nature of the communication. The mere payment of transportation expenses by the Trustee did not make him co-counsel with Pendergrass. Pendergrass' clients' interest was adverse to that of the defendants.

> "Secondly, there is strong evidence in this case that on that date, April 7, 1961, the defendants were still concealing assets in violation of the law. An attorney's advice about a course of continuing violation of the law is not privileged. This is a close question. The defendants made a very good argument, and they have a record on it. Nothing more need be said." (Tr. 362, 363)

Prior to admitting Exhibit 2-0 in evidence, the District Court had heard a major portion of the Government's case as well as the testimony of attorneys Morley and Long and Special Agent Price. The Court had learned of defendants' actions constituting a plan for their continued transfer and concealment of their property from their creditors and the Trustee of their bankrupt estates. Defendants' concealment of portions of their property was in progress during the time of attorney Morley's Canadian meeting with them in late March, 1961, and at the time he sent his letter of April 7, 1961. Defendants' Cessna aircraft had not then been discovered by the Trustee and was not discovered until December, 1962. Defendants' concealment of $36,500.00 in United States currency was in progress, not only at the time of attorney Morley's visit and letter, but also at the time Exhibit 2-0 was admitted in evidence by the District Court. Attorney Morley's letter of April 7, 1961, provided defendants' advice about their continuing crime and fraud. Such communications are not privileged.

There is substantial evidence to support the District Court's finding of waiver by defendants of any privilege respecting Exhibit 2-0. Attorney Morley had represented defendants for probably ten or twelve years prior to 1960 - 1961. At the time he visited defendants in Canada and wrote his letter of April 7, 1961, he was actively engaged in the defense of two civil actions and the prosecution of another on behalf of Fred Stegeman. Acting on behalf of defendants and in their best interest, attorney Morley sent an undisclosed copy of his letter of April 7, 1961, to the Trustee's attorney. This action was intentional and not inadvertent. Exhibit 2-0 shows upon its face that it was an attempt by attorney Morley on behalf of defendants to forestall criminal prosecution and reduce their potential liability after their bankruptcy proceedings were over. Such advice was rendered to defendants by attorney Morley with respect to and in the course of his management of litigation and their involuntary bankruptcy proceedings. He had entered important negotiations on their behalf.

These unusual and special circumstances created an implied and apparent authority in attorney Morley to act in defendants' best interest in these matters and to make disclosure to the Trustee of the contents of his letter of April 7, 1961. Attorney Morley did act in defendants' best interest. The District Court was

correct in finding a waiver by defendants of any attorney-client privileges to this communication.

Defendants' waiver in advance of trial of any attorney-client privilege as to attorney John Boock consituated a waiver of the privilege by defendants as to their other attorneys, that is Laurence Morley and Merle Long. Defendants should not be permitted to select from among several attorneys one whose advice they find favorable without waiving the privilege as to their other attorneys. It is enough that defendants may use the privilege as a shield. They should not be permitted to use it as a sword. The District Court was correct in finding that attorney Morley had authority to act on the defendants' behalf and did so in sending Exhibit 2-0 to the Trustee's attorney.

If attorney Morley's disclosure to the Trustee's attorney was an accident of his own making, such disclosure is not protected. The risk of a careless attorney is placed upon the client, as in cases of loss or theft of documents from an attorney's possession. A similar rule is found in communications between husband and wife and in communications overheard by third persons without the client's knowledge.

Assuming, arguendo, that attorney Morley was co-counsel for the Trustee of defendants' bankrupt estates, he has a statutory and ethical duty to disclose to the Trustee his communication to defendants respecting

their continuing crime and fraud. 18 USC §3057 requires a Trustee to report violations of the Bankruptcy Laws to the United States Attorney. As co-counsel for the Trustee, attorney Morley could not sit idly by and allow defendants to continue to defraud their creditors and the Trustee for whom he was counsel. If attorney Morley was the Trustee's co-counsel, then any privilege as to Exhibit 2-0 is that of the Trustee who has made no claim of privilege in this action.

Attorney Morley's communication to defendants of April 7, 1961, was not intended by him to be confidential. Attorney Morley intended to send the Trustee's attorney this copy of his letter of April 7, 1961. A communication made for distribution to persons other than the client is stripped of any attorney-client privilege.

The contents of Exhibit 2-0 were obtained by attorney Morley from third persons and sources other than defendants. Such communications are not privileged.

The District Court was correct in admitting Exhibit 2-0 in evidence.

ARGUMENT

I

THE DISTRICT COURT WAS CORRECT IN ADMITTING DEFENDANTS' STATEMENTS TO SPECIAL AGENT PRICE

Defendants assign error in the District Court's ruling permitting their statements to Special Agent William D. Price of the Federal Bureau of Investigation to be received in evidence (App. Br., Pg. 10) (Tr. 156, 410-434).[2]

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[2] Rule 38 of the United States District Court for the District of Oregon provides:

> "Unless otherwise ordered, the United States Attorney, at least ten days prior to trial, shall give written notice to the defendant through his attorney of any and all written or oral confessions or admissions of the defendant which the Government intends to use during the course of the trial.
>
> "Not less than five days prior to the trial date, defendant's attorney shall, unless otherwise ordered, notify the Clerk of the Court and the United States Attorney of the objections, if any, which defendant may have to such confessions or admissions. On receipt of the objections, the Clerk shall fix a time and place for hearing such objections and determining the admissibility of the alleged confessions or admissions."

Defendants were supplied copies of their statements as made to Agent Price more than ten days in advance of trial. These statements are printed at pages 76-87 of the Appendix of this Brief. Defendants' first objection to the use of such statements was made on the first day of trial. Thereafter, during the first day of trial, the District Court conducted a hearing as required by *Jackson v. Denno,* 378 US 368 (1963). Following such hearing, the Court found (Tr. 156): "THE COURT: I find that without any doubt there was no deprivation of freedom of any action for either defendant in this case at the time of the interrogation. In other words, there was no custody situation, and a Motion to exclude the admission is denied. . ."

Defendant Ione Stegeman talked with Agent Price at her mobile trailer home at Kline's Trailer Court, Nelson, British Columbia, Canada, on December 13, 1962.[a] Following work on February 20, 1963, defendant Fred Stegeman came to the office of the Royal Canadian Mounted Police at Castlegar, British Columbia, Canada, and also talked with Agent Price. On the first day of trial, the District Court held a hearing out of the presence of the jury as required by *Jackson v. Denno,* 378 US 368 (1963), and denied defendants' Motions to exclude their statements (Tr. 156). Thereafter, Agent Price testified before the jury concerning defendants' conversations with him in Canada (Tr. 410-434).

Defendants object to the use of their statements to Agent Price on the ground that they did not receive the full, four-fold warning required by *Miranda v. Arizona,* 384 US 436, 479 (1966). The question before the District Court quickly resolved itself into a determination of whether or not defendants' statements stemmed from a custodial interrogation further defined as ". . . . questioning initiated by law enforce-

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[a] Agent Price testified before the jury that he first saw defendant Ione Stegeman at her residence on December 13, 1962 (Tr. 410). Agent Price's report indicates the date of this first visit was December 13, 1962. Agent Price testified at the hearing out of the presence of the jury that his first visit was on November 13, 1962 (Tr. 136). Appellee submits the difference of date is not material.

ment officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Miranda v. Arizona,* 384 US 436, 444, 477 (1966) (Tr. 152-156). The District Court held that defendants were not in custody and that they were not deprived of their freedom of action in any significant way (Tr. 156). Accordingly, the warnings required by *Miranda* were not required. There is substantial evidence to support the District Court's finding.

Defendants were not under indictment, arrest, subpoena, or subject to extradition proceedings when they talked with Agent Price.[4] At no time did they ask to consult with counsel or to have counsel present.[5] At no time were any tricks, cajolery, threats or violence employed, nor do defendants suggest that they were. Defendants had obtained the advice of attorneys John Boock, Laurence Morley and Merle Long well prior to their interviews with Agent Price.

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[4] Defendants were indicted by a Federal Grand Jury at Portland, Oregon, on February 19, 1964 (R. 1). Agent Price's powers as a police officer ceased at the Canadian border.

[5] No attempt was made in the instant case to keep counsel from defendants. The requirements of *Escobedo v. Illinois,* 378 US 478 (1964) are encompassed, in the instant case, within the requirements of *Miranda v. Arizona,* 384 US 436 (1965). See *Miranda v. Arizona,* supra, at 444, footnote 4 and at 465, footnote 35.

A. STATEMENT OF IONE STEGEMAN.

Ione Stegeman talked with Agent Price in the living room of her trailerhouse during daylight hours. He advised her that she need not talk with him, that the information which she might furnish could be used against her in Court, that she had a right to consult an attorney, and that any statements which she did make would have to be voluntary on her part (Tr. 136, 138, 410, 412; Ex. 1 - Interview of Ione Stegeman). Ione Stegeman was advised that she could stop at any time she desired (Tr. 412).[6] On one occasion Agent Price indicated they could stop their discussion, and she responded "Well, no. Go ahead and ask your questions." (Tr. 413, lines 18 and 19). This interview took place in the presence of Corporal Charles Peever, RCMP, who remained silent throughout. A young girl, whom Agent Price took to be Mrs. Stegeman's daughter, was also present, as was a young baby (Tr. 137). No threats or promises or any suggestion thereof were made by Agent Price or Corporal Peever (Tr. 138). After a time, Mrs. Stegeman indicated she did not care to furnish any further information (Tr. 418). Agent Price and Corporal Peever immediately departed. Mrs. Stegeman was not arrested and not taken

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[6] This warning constitutes the standard warning long given by special agents of the FBI to both suspects and persons under arrest and ". . . is consistent with the procedure . . ." delineated in *Miranda v. Arizona,* 384 US 436, 484 (1966).

into custody, nor was it anyone's intention to do so (Tr. 138, 418).

Agent Price's purpose in going to Canada was to attempt to locate Mr. and Mrs. Stegeman (Tr. 136), to give her an opportunity to make a complete and full disclosure of any and all information she wished to furnish in regard to an alleged concealment of assets and to advise her that there was a possibility of a violation of the National Bankruptcy Act (Tr. 137).[7] No decision to undertake prosecution against Mrs. Stegeman had yet been made. Agent Price advised Mrs. Stegeman, however, that its possibility was being considered (Tr. 137, 411, 412; See Ex. I - Interview of Ione Stegeman). Agent Price was attempting to determine the facts respecting the nature and location of defendants' property and the circumstances surrounding their departure from the United States and residence in Canada.[8] Mrs. Stegeman was free to refuse or to give whatever answers she chose or to end the conversation whenever she chose. At the time of this interview Agent Price was engaged in an investigation to determine facts from which a determination might

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[7] See *U.S. v. Konigsberg,* 336 F.2d 844 (CA 3, 1964).

[8] The Trustee in bankruptcy had not yet located defendants' Cessna aircraft and the sum of $36,500.00 in United States currency which defendants had received shortly before their departure for Canada.

be made as to whether a violation of the laws of the United States had occurred.

This is not in-custody interrogation as encompassed by *Miranda v. Arizona,* 384 US 436 (1966). *Miranda,* and its accompanying decisions, dealt with interrogations at police stations by police officers following arrest of a defendant. It is generally believed, although not held, that the requirements of *Miranda* extend beyond the police station to situations in which ". . . questioning [is] initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Miranda v. Arizona,* 384 US 436, 444, 477 (1966). The District Court found that Ione Stegeman had not been taken into custody and had not been deprived of her freedom as contemplated by *Miranda.*

The District Court's finding is supported by numerous decisions. *Kohatsu v. United States,* 351 F.2d 898, 900 (CA 9, 1965), cert. denied 384 US 1021 [Defendant interviewed by Internal Revenue Agents at his office]; *U.S. v. Bottone,* 365 F.2d 389, 395, alternative holding (CA 2, 1966), cert. denied 385 US 974 [Defendant consented to civil interrogation in connection with patent infringement suit]; *U.S. v. Fiore,* 258 F.Supp 435, 440 (WD Pa, 1966) [Defendant interviewed by Internal Revenue Service Agents at his apartment]; *U.S. v. Bachman,* 267 F.

Supp 593, 595 (WD Pa, 1966) [Defendant interviewed at his home by Internal Revenue Service Agents]; *Nason v. Immigration* and *Naturalization Service,* 370 F.2d 865, 868 (CA 2, 1967) [Defendant questioned by Customs officers at a border crossing]; *State v. Meunier,* 224 A2d 922 (Vt., 1966) [Defendant interviewed by a uniformed officer at his apartment in a funeral home]; *State v. Cook,* 82 Ore Adv. Sh 167, 411 P.2d 78 (Ore, 1966) [Defendant questioned at place of employment by police officers]; *State v. Zucconi,* ..... A.2d ..... (NJ Sup Ct, November 6, 1967, The Criminal Law Reporter, Volume II, Number 10, December 6, 1967, pg. 2175) [Defendant questioned by police officers in his hospital room and his home].

People v. Allen, 272 NYS 2d 249, 256-257, 50 Misc. 2d 897, 905 (Sup Ct, 1966), relied upon by defendants, is distinguished from the instant case by the fact that police officers with the power to arrest went to defendant's apartment with the intention to arrest the defendant. As noted by the Court ". . . no refusal to answer, no denial, no exculpatory statement of the defendant would have excused a failure to arrest" (*People v. Allen,* supra., 50 Misc. 2d 897, 905). In addition, the police officer gave none of the fourfold warnings required by *Miranda.* Finally, the Court recognized that investigation would not be considered custody. *People v. Allen,* supra, 50 Misc. 2d 897, 905.

See *Miranda v. Arizona,* 384 US 436, 462, 478 (1966).

The evidence is clear and uncontradicted that defendant Ione Stegeman's conversation with Agent Price was not an incommunicado interrogation in a police-dominated atmosphere. See *U.S. v. Florence,* 367 F.2d 595, 597 (CA 3, 1967). Rather, this interview was incident to an investigation of possible violations of the National Bankruptcy Act under familiar conditions in which Mrs. Stegeman was not deprived of her freedom of action in any significant way.

B. STATEMENT OF FRED STEGEMAN.

Agent Price also went to Canada to look for Fred Stegeman (Tr. 422). On February 20, 1963, he found him working at the Celgar Plant, near Castlegar, British Columbia, Canada. Agent Price was engaged in an investigation of alleged concealment of funds in regards to a possible violation of the National Bankruptcy Act (Tr. 144, 424; Ex. 1 - Interview of Fred Stegeman).[9] Agent Price, together with an RCMP officer, went to the Celgar Plant. That officer located Stegeman (Tr. 141), who agreed to come to the of-

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[9] At this time the Trustee in bankruptcy had not located the sum of $36,500 in United States currency which defendants received shortly before their departure from the United States for Canada.

fice of the RCMP at Castlegar and talk with Agent Price after work. At approximately 5:00 o'clock in the afternoon, Fred Stegeman came to the RCMP office at Castlegar and talked there with Agent Price for approximately an hour and a half to two hours (Tr. 423, 432).

Following his arrival, Fred Stegeman and Agent Price were given a room in which to talk (Tr. 143). No one else was present at the actual interview, although Canadian police officers occasionally passed through the room (Tr. 143, 144). Agent Price advised Stegeman that he did not have to make any statements, that any information he did furnish could be used against him in a Court of law, and that he had a right to consult an attorney (Tr. 144, 424; Ex. 1 - Interview of Fred Stegeman).[10] Stegeman had come to the office of the RCMP in his own jeep (Tr. 143).

Agent Price advised Stegeman of the purpose of this interview, namely that it was to give him an opportunity to make a full and complete disclosure of all assets and liabilities in regards to his involuntary bankruptcy. (Ex. 1 - Interview of Fred Stegeman)[11]

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[10] This warning constitutes the standard warning long given by special agents of the FBI to both suspects and persons under arrest and ". . . is consistent with the procedure . . ." delineated in *Miranda v. Arizona,* 384 US 436, 484 (1966).

[11] See *U.S. v. Konigsberg,* 336 F.2d 844 (CA 3, 1964).

Stegeman responded that he was willing to talk to Agent Price and furnish any information that he knew (Tr. 144, 145, 148). He was told that he could stop the interview at any time (Tr. 424). This interview was conducted at the police office merely as a matter of convenience (Tr. 149). Mr. Stegeman was at liberty to leave at any time and was so told (Tr. 151, 430). He was further told that anything he said had to be strictly voluntary on his part (Tr. 424). At no time was Fred Stegeman arrested or taken into custody by the Canadian police or anyone else (Tr. 430), nor was such action contemplated. No decision to undertake prosecution of Fred Stegeman had then been made.

It is clear that Agent Price's interview of Fred Stegeman was not an incommunicado interrogation in a police-dominated atmosphere of which *Miranda* speaks. *Miranda v. Arizona,* 384 US 436, 461 (1966). A room at the office of the RCMP at Castlegar, British Columbia, Canada, was a more convenient place to discuss these matters than Stegeman's place of employment. This police office was not Agent Price's office or an office of any police force of the United States. Agent Price had no powers as a police officer in Canada, and the RCMP took no interest in this matter other than accompanying Agent Price to serve as a means of verfying his identity as an Agent of the FBI. Their granting of use of a room at their police

office in Castlegar was a matter of courtesy. Fred Stegeman was not deprived of his freedom of action in any significant way. His statements were volunteered during the course of an investigation to determine whether or not a violation of the National Bankruptcy Act had occurred.[12] The District Court was correct in permitting Agent Price to testify regarding Fred Stegeman's statements to him in Canada on February 20, 1963.[13][14]

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[12] See *Miranda v. Arizona,* 384 US 436, 462, 478 (1966).

[13] See *People v. Graves,* 64 Cal.2d 208, 411 P.2d 114, 49 Cal. Rptr. 380 (1966), cert. denied 385 US 883 (October 10, 1966 - *Post-Miranda*); See also *People v. Silva,* 236 Cal. App.2d 453, 46 Cal. Rptr. 87 (1965); *People v. Martinez,* 239 ACA 176, 48 Cal. Rptr. 521 (1966).

[14] The evidence of defendants' guilt is uncontradicted and overwhelming. Should this Court find error in the admission of defendants' statements to Agent Price, it is harmless error. The matters contained in these statements are cumulative. Ione Stegeman's statements about ownership and possession of the 1959 Buick, trailerhouse, and Cessna aircraft and Fred Stegeman's statements about his receipt of $36,500.00, possession and disposition of this Cessna aircraft, and delivery of Cashier's checks to John Boock (See App. Br., ppg 7, 8) is cumulative, of the testimony and accompanying exhibits of Corda Gaubert (Tr. 63, 96), Charles Hamlin (Tr. 391, 400), Delmar McNutt (Tr. 378-381), Lynn Langmack (Tr. 232-249), John Boock (Tr. 271, 293, 321-332), and stipulated testimony and exhibits (Tr. 227-231). Any such error is harmless beyond a reasonable doubt. *Chapman v. California,* 386 US 18, 24 (1967); *Bushaw v. United States,* 353 F.2d 477, 481 (CA 9, 1965).

II

THE DISTRICT COURT WAS CORRECT IN REJECTING DEFENDANTS' REQUESTED INSTRUCTION NO. 15

Defendants assign as error the District Court's rejection of their Requested Instruction No. 15. [15] This instruction and this assignment of error pertain only to defendants' convictions upon the charge set forth in Count II of the Indictment (R. 23) (See App. Br., pages 20-23).

The District Court, in rejecting defendants' Requested Instruction No. 15, stated (Tr. 521-522):

> ". . . But on the last point you [defendant Fred Stegeman's attorney] just made, it does squarely touch upon something omitted by the Court, because I do not agree with your statement of the law. So it is squarely in the record . . ."
>
> "THE COURT: All right, sir. I would be interested to know whether you feel a citizen of the United States who lives in Canada would have to file an income tax return? (Pause) You don't have to answer that" . . .

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[15] Defendants' Requested Instruction No. 15 is set forth in the Appendix of this Brief, page 99.

A. THERE IS SUBSTANTIAL EVIDENCE OF DEFENDANTS' DIRECT ACTION OF CONCEALMENT IN OREGON AFTER LEARNING OF THE EXISTENCE OF THEIR BANKRUPTCY PROCEEDINGS AND OF THE TRUSTEE.

Defendants suggest the jury may have found that defendants took no direct action in Oregon after learning of their bankruptcies and the appointment of a Trustee. (See App. Br., pages 21-23). There is substantial evidence to the contrary. This evidence, when viewed in the light most favorable to the Government, including reasonable inferences therefrom (*Glasser v. U.S.*, 315 US 60, 80 (1941)), may be summarized as follows:

(1) $4,435.00 (R. 2) — Defendant Fred Stegeman stated that upon his departure for Canada he left money with his eldest daughter to pay some debts (Ex. 1 - Interview of Fred Stegeman). Corda Gaubert, acting for defendants, transferred the balance of defendants' funds in the Lane County Bank at Florence, Oregon, $4,435.00, to their eldest daughter, Lynn Langmack, at Albany, Oregon, on December 10, 1960 (Tr. 98, 245, 246; Ex. 2-A). Lynn Langmack deposited this sum in a special account in her name at the Citizens Bank of Albany, Albany, Oregon, on December 17, 1960 (Tr. 245, 246). The Trustee did

not discover such sum until disclosure of its existence to him by Albany, Oregon, attorney Merle Long during the latter part of March, 1961 (Tr. 37, 38, 294).

(2) Approximate Sum of $1,000.00 to John Boock (R. 2) — Defendants' Oregon attorney, John Boock, received and deposited at Albany, Oregon, on December 12, 1960, a payment to him from Corda Gaubert of approximately $1,000.00 (Tr. 349, Ex. 1-C). The Trustee did not discover the existence of such payment until attorney Boock revealed it to the Trustee during the latter part of March, 1961, or in his letter of April 12, 1961 (Tr. 39; Exs. 1-N, 2-C).

(3) Approximate Sum of $26,598.68 (R. 3) — Defendants' attorney, John Boock, did not reveal to the Trustee the existence of the sum of $26,598.68 until after April 1, 1961 (Tr. 19; Ex. 1-V). John Boock had received such sum from defendants' eldest daughter, Lynn Langmack, in January, 1961, and had caused a major portion of this amount to be deposited, following telephone consultation with defendants, in an Albany, Oregon, bank accounts of FIMPS Investment Co. (Tr. 238-239, 289, 290, 321-322; Exs. 1-M, 1-N, 1-V). Attorney Boock did not reveal his continued retention of this sum at bankruptcy hearing on March 8, 1961 (Ex. 1-V).

(4) Cessna Aircraft (R. 3) — Defendants, with the assistance of William and Corda Gaubert, caused

their Cessna aircraft to be flown from Springfield, Oregon, to Pasco, Wshington, and thereafter to Nelson, British Columbia, Canada, during February and March, 1961 (Tr. 392-398). The Trustee did not discover the whereabouts of this aircraft until December, 1962, at Colville, Washington (Tr. 36, 37; Ex. 3-W, p. 5).

Defendants' involuntary bankruptcy proceedings were commenced on December 15, 1960 (Exs. 3-A, 3-G). Defendants learned of these proceedings during January, 1961 (App. Br., p. 22; Ex. 1 - Interview of Ione Stegeman). Defendants were adjudicated bankrupts on January 18, 1961 (Exs. 3-B, 3-H). A Trustee was appointed for their bankrupt estates on February 17, 1961 (Ex. 3-S). Defendants' attorney Morley discussed their bankruptcy with the Trustee's attorney prior to his departure and meeting with defendants in Canada (Tr. 315, 316). Attorney Morley discussed defendants' bankruptcy with them in Canada in March, 1961 (Tr. 308),[16] as did attorney Merle Long during April or May, 1961 (Tr. 299). The Trustee's attorney, Walter Pendergrass, made personal demands upon defendants in Canada for the location of their Cessna aircraft and the sum of $36,500.00 in United

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[16] Appellants contend that attorney Morley was co-counsel for the Trustee at the time of this meeting. See Appellant's Brief, pages 31-33.

States currency about April 30, 1962 (Tr. 29, 30, 36; Ex. 3-W, p. 14, Disbursements, p. 2).

Defendants, acting individually and through their agents, committed direct and affirmative acts of concealment in Oregon of items of their property as charged in Count II of the Indictment after they had knowledge of the existence of their bankruptcy proceedings and the appointment of the Trustee.[17] The District Court properly instructed the jury regarding the nature and elements of concealment and the requirement of defendants' ownership of the properties as charged in the Indictment.

B. AFTER LEARNING OF THE COMMENCEMENT OF THEIR BANKRUPTCY PROCEEDINGS AND THE APPOINTMENT OF A TRUSTEE, DEFENDANTS HAD A DUTY TO DISCLOSE THE WHEREABOUTS OF THEIR PROPERTY.

Defendants' involuntary bankruptcy proceedings were commenced on December 15, 1960. Defendants

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[17] Defendants do not assign error in either the Court or jury's determination of defendants' ownership of various items of property as charged in Count II of the Indictment. The Court's instructions clearly apprized the jury that defendants could only be convicted of concealment of property belonging to their bankrupt estates (Tr. 498-502, 509, 512-515). The Court in substance gave defendants' requested instruction in this regard (Tr. 498-502, 509, 512-515; R. 71, 81, 82, 89, 100).

had knowledge of these proceedings during January, 1961. They were adjudicated bankrupts on January 18, 1961, and a Trustee appointed on February 17, 1961. Defendants learned of the Trustee's existence not later than attorney Morley's meeting with them in Canada during late March, 1961 (See Tr. 357).

Within five days after their adjudication as bankrupts, defendants had a duty, *inter alia,* to file schedules indicating the location, nature and value of their property (11 USC §25). The Trustee was not required to make demand of defendants for their property. *Douchan v. U.S.,* 136 F.2d 144, 146 (CCA 6, 1943), cert. denied 319 US 773 (1943).

Rachmil v. U.S., 43 F.2d 878 (CCA 9, 1930), cert. denied 283 US 819, *U.S. v. Yasser,* 114 F.2d 558 (CCA 3, 1940), and *Edwards v. U.S.,* 265 F.2d 302 (CA 9, 1959) require knowledge by defendants of the existence of a bankruptcy proceeding or a Trustee before a bankrupt may be found to have concealed his property in such proceeding or from such Trustee. But see *U.S. v. Goldstein,* 132 Fed. 789 (DC WD Va., 1904) holding that there can be a concealment from a Trustee during the period after the commencement of a bankruptcy proceeding and before the appointment of a Trustee. See Comment, 11 Cornell Law Quarterly, 300, 311.

It is sufficient if the concealment was from either a Trustee or creditors of the bankrupt estates. *U.S. v. Yacht,* 135 F.Supp 911 (DC SDNY, 1955).

Concealment of one of the items of property as charged in the Indictment will constitute the offense. *Bisno v. U.S.,* 299 F.2d 711, 714 (CA 9, 1961), cert. denied 370 US 952 (1962); *Edwards v. U.S.,* 265 F.2d 302, 306 (CA 9, 1959).

The evidence concerning defendants' concealment of the items of property set forth in Count II of the Indictment has been previously summarized. This Court is respectfully referred to the Counterstatement of Facts in Appellee's Brief and the Summary of Evidence set forth in Argument II (A) above.

Defendants, as we understand them, contend that their duty to disclose the nature and location of their property to the Trustee stops at the Canadian border. Defendants appear to say that because the Bankruptcy Court has no power to enforce its Orders over their persons in Canada, that defendants, while in Canada, have no duty to disclose their property to the Trustee.[18]

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[18] The Bankruptcy Court was able to assert its power over defendants in Canada by making application to Judge Eric P. Dawson of the Kootenay County Court, British Columbia, Canada, for an order compelling the attendance of defendants for deposition. Judge Dawson, on April 10, 1962, ordered the bankrupts to be present for examination on April 30, 1962, at 1:00 P.M., at the County Courthouse of Kootenay County, Nelson, British Columbia (Ex. 3-W, pg. 14).

Defendants make this contention despite their personal knowledge of the existence of their bankruptcy proceedings in Oregon, existence of the Trustee, and his demands made personally upon them in Canada. In short, defendants assert that while in Canada, they cannot conceal their property from their creditors or their Trustee. This is not the law.

Defendants' duty to disclose the nature, location, and value of their property follows them wherever they may go. Section 7(a)(8) of the Bankruptcy Act (11 USC §25) and the statute under which defendants were convicted, 18 USC §152, contain no geographic limitation. Had defendants filed petitions and schedules in Oregon and failed to disclose their assets in such schedules, there would be no question as to the applicability of 18 USC §152. *U.S. v. Schireson,* 116 F.2d 881, 884 (CCA 3, 1940).[19] The result should not be different where defendants remain silent after knowledge of their bankruptcy proceedings and demands upon them by the Trustee.[20] Defendants' duty to disclose remains whether they file petitions or re-

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[19] Defendants have made no objection to the venue of this action.

[20] *Rachmil v. U.S.,* supra.; *U.S. v. Yasser,* supra.; and *Edwards v. U.S.,* supra., relied upon by defendants, turned upon a complete absence of knowledge by the defendant of both the existence of the bankruptcy proceeding and the Trustee at the time of the alleged concealment. Such is not here the case.

main silent. Defendants' failure and omission to speak in the face of a duty to speak imposed upon them by the Bankruptcy Act is an affirmative act no different in result than that which would have followed omission of their property from schedules filed in Oregon. It is as if defendants and their property were on the Canadian side of the line and defendants stood in the line of the Trustee's vision in such a way that the Trustee could not see the objects in Canada. In such instance the concealment would take place on the Oregon side of the line.[21] The Statute, 18 USC §152, is directed toward concealment by whatever means. See *U.S. v. Greenbaum,* 252 Fed. 259, 264 (ED Mich., 1918); rev'd on other grounds 280 Fed. 474 (CCA 6, 1922). The physical situs of defendants' property is immaterial. See *U.S. v. Schireson,* 116 F.2d 881 (CCA 3, 1940); *Conneto v. U.S.,* 251 Fed. 42, 44 (CCA 9, 1918); 2 Collier's on Bankruptcy, 14th Ed., ~~about its location.~~ 1940, ¶ 29.05 pg. 1163.

Defendants' Requested Instruction No. 15 did not state the law.[22] The Court's analogy regarding the duty OF INDIVIDUALS TO FILE INCOME TAX RETURNS IS APT. 23 ~~1940, §29.05 pg. 1163.~~ Were the law otherwise, we might expect bankrupts to leave the jurisdiction, se-

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[21] This analogy is taken from *U.S. v. Schireson,* 116 F.2d 881, 884 (CCA 3, 1940).

[22] Defendants' Requested Instruction No. 15 constitutes in part a comment upon the evidence which the Court was not required to make.

crete their property in Canada, and remain silent ~~of Individuals to file Income Tax returns is apt.~~[23] This duty, like the duty of a bankrupt to disclose his property to a bankruptcy Trustee, follows an American citizen wherever he may go.

III

THE DISTRICT COURT WAS CORRECT IN ADMITTING GOVERNMENT EXHIBIT 2-0

Government Exhibit 2-0 is a copy of a letter, the original of which was sent by attorney Laurence Morley to defendants in Nelson, British Columbia, Canada. Attorney Morley sent this copy to attorney Walter Pendergrass, attorney for the Trustee of the bankrupt estates of Fred and Ione Stegeman[24] (R. 136, Tr. 363-365). Defendants objected to the admission of this exhibit in evidence upon the ground that it was a confidential communication between attorney (Morley) and clients (Fred and Ione Stegeman) and privileged (R. 134, Tr. 310, 362). The District Court received testimony and heard argument on this matter out of the presence of the jury (Tr. 362-365). On the morning of the third day of trial, the District Court admitted Exhibit 2-0 in evidence (Tr. 362, 365). At that time the Court stated (Tr. 362, 363):

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[23] See 26 USC §§ 6012, 6013, 6017, 6031, 6072.

[24] Government Exhibit 2-0 is reproduced at pages 70-75 of the Appendix of this brief.

"THE COURT: Exhibit 2-0 will be admitted as evidence in this case —

"MR KRAEMER: Exception, Your Honor.

> "THE COURT: — for the following reasons: Mr. Morley, in representing his clients, the defendants, had authority to act on their behalf. He felt that it was to their advantage that Mr. Pendergrass, a third person, receive a copy of the communication. That destroyed the confidential nature of the communication. The mere payment of transportation expenses by the Trustee did not make him co-counsel with Pendergrass. Pendergrass' clients' interest was adverse to that of the defendants.
>
> "Secondly, there is strong evidence in this case that on that date, April 7, 1961, the defendants were still concealing assets in violation of the law. An attorney's advice about a course of continuing violation of the law is not privileged. This is a close question. The defendants made a very good argument, and they have a record on it. Nothing more need be said."

A. EXHIBIT 2-0 DEALT WITH DEFENDANTS' CONTINUING CRIME AND FRAUD. THERE IS SUBSTANTIAL EVIDENCE TO SUPPORT THE DISTRICT COURT'S FINDING THAT THERE IS NO PRIVILEGE FOR SUCH A COMMUNICATION.

Prior to admitting Exhibit 2-0 in evidence, the District Court had heard a major portion of the Govern-

ment's case. It had also heard, out of the presence of the jury, the testimony of attorneys Morley and Long (Tr. 306-320, 294-305) and Special Agent Price (Tr. 135-157). From this evidence, the Court had learned of (1) the commencement of defendants' financial troubles during the Spring and Summer of 1960 (Tr. 9-10, 121-123, 161-168, 173, 176); (2) defendants' transfers of real and personal property (including their Buick car, housetrailer, Cessna aircraft, equipment and shop) to their long-time employee, William Gaubert, and his wife, Corda Gaubert, during April and August, 1960 (Tr. 83-85, 95-96, Exs. 1-R, 1-Q, 1-X); (3) defendant Fred Stegeman's assignment, during August, 1960, of the proceeds of his two road contracts to William Gaubert (Tr. 181-184; Ex. 1-Y);[25] (4) defendants' transfer of their home and its furnishings in Lebanon, Oregon, and other property to their eldest daughter, Lynn Langmack, during April - October, 1960 (Tr. 234-235, 332-335; Ex. 1-X); (5) defendants' establishment of a bank account in the name of Corda Gaubert at the Lane County Bank, Florence, Oregon, during September, 1960, and the use of such account to conduct their failing business (Tr. 64-67; Exs. 1-D, 1-LL); (6) various demands and legal actions against defendants (Exs. 1-W, 1-Z,

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[25] Defendant Fred Stegeman revoked this assignment without notice to William Gaubert on September 27, 1960 (Tr. 184-185;) Ex. 1-Y).

1-AA, 1-CC, 1-DD, 1-RR, 2-0); (7) defendants' discussion with attorney Boock during late November, 1960, of their financial difficulties and various courses open to them including voluntary and involuntary bankruptcy (Tr. 278-285; Ex. 1-CC); (8) defendants' receipt of $36,500.00 in United States currency in late November and early December, 1960 (Tr. 72-79; Exs. 1-G, 4); (9) defendants' sudden departure for Nelson, British Columbia, Canada, without their three minor children during December, 1960 (Tr. 86-89, 7, 237-278, 284, 285-286); (10) defendants' removal of their car and housetrailer to Nelson, B.C., Canada (Tr. 7-8, Exs. 1-S, 1); (11) defendants' leaving money with their eldest daughter upon their departure for Canada (Tr. 145; Ex. 1 - Interview of Fred Stegeman; Tr. 79-80, 245); (12) commencement of defendants' involuntary bankruptcy proceedings on December 15, 1960, and defendants' knowledge of such proceedings in January, 1961 (Tr. 13-58, 139; Exs. 1 - Interview of Ione Stegeman, 3-A, 3-B, 3-G, 3-H, 3-S, 3-W); (13) defendants' formation, with the assistance of attorney Boock, of FIMPS Investment Company during January, 1961 (Tr. 289-290, Ex. 1-M); (14) receipt by attorney Boock from defendants of two cashier's checks totaling $26,598.68 (Tr. 238-239, 321-322, Exs. 7, 9), and the deposit of a major portion of such funds by attorney Boock in FIMPS' Albany, Oregon, bank account, during January and February, 1961; (15) appointment of a

trustee in defendants' involuntary bankruptcy proceedings on February 17, 1961 (Tr. 16, Ex. 3-S); (16) disclosure by attorney Boock to the bankruptcy trustee in early April, 1961, of the sum of $26,598.68 and other monies (Tr. 19; Exs. 1-B and 1-N); (17) disclosure to the bankruptcy Trustee by attorney Long during March, 1961, of the sum of $4,435.54 received by defendants' eldest daughter, Lynn Langmack, during December, 1960; (18) demands of the attorney for the Trustee for the sum of $36,500.00 in United States currency and Cessna aircraft (Tr. 29, 30, 31, 36); (19) discovery by the Trustee of defendants' Cessna aircraft in December, 1962 (Tr. 36-37; (20) conflicting evidence and statements of defendant Fred Stegeman regarding his ownership of his Buick Car and housetrailer (Tr. 10; Exs. 1-S, 1-X); (21) defendants' continued concealment of the sum of $36,500.00 in United States currency (Tr. 35, 36).

The foregoing constitutes substantial evidence of defendants' plan for the continued transfer and concealment of their property from their creditors and the Trustee of their bankrupt estates as charged in the Indictment (R. 1-3). Defendants' execution of their plan began in the Spring of 1960. It was climaxed by defendants' receipt from the Bureau of Public Roads on November 30, 1960, of $41,624.79 due Fred Stegeman upon his failing road contracts followed by defendants' sudden departure for Canada (Tr. 181;

Exs. 1-B, 1-C, 1-D, 1-CCC). Defendants' concealment of portions of their property continued during attorney Morley's Canadian meeting with them in late March, 1961, and at the time he sent his letter of April 7, 1961 (Ex. 2-0). This concealment continued. Defendants' Cessna aircraft was not discovered by the Trustee until December, 1962 (Tr. 37, 54). Defendants' concealment of $36,500.00 in United States currency was continuing at the time Exhibit 2-0 was admitted in evidence by the District Court (Tr. 35, 36). It is not unreasonable to say that defendants asked the District Court to exclude a communication about a crime and fraud they were then carrying on before that Court.

The Trial Court stated the Rule. "An attorney's advice about a course of continuing violation of the law is not privileged." (Tr. 362). Attorney Morley's letter of April 7, 1961 (Ex. 2-0) provided defendants with important advice of great specificity as to the consequences of their continued refusal to disclose their properties and to return to the United States. Such communications are not privileged. *Clark v. U.S.,* 289 US 1, 15; *U.S. v. Bob,* 106 F.2d 37, 40 (CCA 2, 1939), cert. denied 308 US 589 (1939); *Fuston v. U.S.,* 22 F.2d 66, 67 (CCA 9, 1927; *Hett v. U.S.,* 353 F.2d 761, 764 (CA 9, 1966), cert. denied 384 US 905 (1965); *SEC v. Harrison,* 80 F. Supp. 226, 230 (DDC, 1948); 8 Wigmore, Evidence, McNaughton

Rev. 1961, Sec. 2298. *State v. Sullivan,* 60 Wash. 2d, 214, 373 P.2d 474 (1962), relied upon by defendants, dealt with a past crime, not a continuing and future one as here. All that is required to drive the privilege away is "something to give color to the charge." *Clark v. U.S.* 289 US 1, 15; See *A. B. Dick Co. v. Marr,* 95 F. Supp. 83, 102 (DCSD NY, 1950).

The District Court was correct in finding that on April 7, 1961, there was strong evidence that defendants were still concealing assets in violation of the law and that an attorney's advice about this course of continuing violation of the law is not privileged. Appellants do not challenge this finding. See Appellant's Brief, page 24. The District Court was correct in admitting Exhibit 2-0 in evidence.

B. THERE IS SUBSTANTIAL EVIDENCE TO SUPPORT THE DISTRICT COURT'S FINDING OF WAIVER OF ANY PRIVILEGE RESPECTING EXHIBT 2-0.

By the morning of the third day of trial, when the District Court admitted Exhibit 2-0 in evidence, the Court had also learned that (1) Attorney Morley had represented defendants " . . . for probably ten or twelve years prior [to 1960 - 1961 and] seen them weekly or monthly all of that time . . ." (Tr. 306); (2) At the time of defendants' departure for Canada in December, 1960, attorney Morley represented defendant

Fred Stegeman in the defense of two civil actions and the prosecution of another (Tr. 307; Ex. 1-RR, 1-QQ) and was working on this litigation until contacted by the Trustee's attorney (Tr. 314); (3) Walter Pendergrass attorney for the Trustee, contacted attorney Morley in the latter part of February or the forepart of March, 1961 (Tr. 307, 314); (4) attorney Morley was then asked by the Trustee's attorney if he would associate to continue these cases (Tr. 314) and replied "I told him that I would continue only on behalf of Mr. Stegeman if I were working for the Trustee" (Tr. 315); (5) attorney Morley was informed by the Trustee's attorney of certain facts which led Morley to become " . . . thoroughly convinced" that defendants would not get a discharge in bankruptcy because of their fraud (Tr. 315, 316); (6) attorney Morley undertook to go and meet defendants in Nelson, B.C., Canada, and the services which he there rendered to defendants " . . . I did in this instance, I did for Mr. Stegeman. That was the only reason I did it." (Tr. 315, 316); (7) attorney Morley met defendants in Nelson, B.C., Canada, during March, 1961 (Tr. 308); (8) at this time defendants knew of the existence of the bankruptcy proceeding, and Morley discussed with defendants their problems relating to the bankruptcy (Tr. 308; Ex. 1 - Interview of Ione Stegeman); (9) following his return, attorney Morley sent defendants a letter, an undisclosed copy of which he sent to attorney Pendergrass (R. 136; Ex. 2-0; Tr. 307, 308).

On April 7, 1961, the date of Exhibit 2-0, attorney Morley still represented defendants in three civil actions and provided them advice in connection with their involuntary bankruptcy proceedings. Attorney Morley testified that in his meeting with defendants in Canada and " . . . what he did in this instance" was "for Mr. Stegeman" (Tr. 315-316). Acting on behalf of defendants and in their best interest, attorney Morley sent an undisclosed copy of his letter of April 7, 1961 (Ex. 2-0) to the Trustee's attorney. Such action was intentional and not inadvertent. The text of Exhibit 2-0 shows upon its face that it was an attempt by attorney Morley on behalf of defendants to forestall criminal prosecution and reduce their potential liability after their bankruptcy proceedings were over (Tr. 315; Ex. 2-0).

Attorney Morley's advice, as contained in Exhibit 2-0, was rendered to defendants with respect to and in the course of his management of litigation and their involuntry bankruptcy proceedings. He had entered into important negotiations on their behalf; namely, defendants' return from Canada and cooperation in their bankruptcy proceedings in exchange for the Trustee's temporary withholding of action in defenddants' three civil actions and bankruptcy proceedings and from reference of this matter to the FBI. The advice which attorney Morley gave defendants in his letter of April 7, 1961, was a particularly effective

means of negotiating with the Trustee. The notation "BC", which attorney Morley placed upon the copy of his letter, not only confirms the intentional character of his sending this letter to the Trustee's attorney, but also heightened its effectiveness as a persuasive document upon him.

These unusual and special circumstances create an implied and apparent authority in attorney Morley to act in defendants' best interests in these matters and to make disclosure to the Trustee of the contents of his letter of April 7, 1961. *Himmelfarb v. U.S.,* 175 F.2d 924, 939 (CA 9, 1949), cert. denied 338 US 860 (1949); *Fratto v. New Amsterdam Fire Insurance Co.,* 359 F.2d 842, 844 (CA 3, 1966); 8 Wigmore, Evidence, McNaughton Rev., 1961, Sec. 2325. Attorney Morley did act in defendants' best interests. As a part of such action, he disclosed to the Trustee's attorney the contents of a communication he had sent defendants. The District Court was correct in finding a waiver by defendants of any attorney-client privilege as to this communication (Ex. 2-0).

Assuming, arguendo, that attorney Morley's disclosure to the Trustee's attorney was " . . . an accident of my [his] own making" (Tr. 309), such disclosure (Ex. 2-0) is not protected. The risk of a careless attorney is placed on the client as in cases of loss or theft of documents from an attorney's possession. 8

Wigmore, Evidence, McNaughton Rev., 1961, Sec. 2325, 2326. An analogous rule is found in communications between husband and wife. *Wolfle v. U.S.* 64 F.2d 566, 567 (CAA 9, 1933), affirmed 291 US 7 (1934); *State v. Wilkins,* 72 Ore. 77, at 82; 142 Pac. 589 (1914), and in communications overheard by third persons with or without the client's knowledge. *Clark v. State,* 261 S.W. 2d 339 (Tex. Crim. App., 1953), cert. denied 346 US 855 (1953); 8 Wigmore, Evidence, McNaughton Rev., 1961, Sec. 2326, 2339.

Finally, it may be suggested that defendants' waiver in advance of trial of any attorney-client privilege as to attorney John A. Boock (R. 9) constituted a waiver of the privilege by defendants as to their other attorneys, i.e. Lawrence Morley and Merle Long. Defendants, in their opening brief reaffirm a line of defense which they pursued at trial, namely, that their actions were governed by the legal advice of attorney John Boock. Appellants apparently deemed his testimony favorable. Appellants apparently further considered testimony of attorney Morely and Long unfavorable. Defendants should not be permitted to select from among several attorneys one whose advice they find favorable without waiving the privilege as to their other attorneys. The policy of the attorney-client privilege in promotion of a freedom of consultation between clients and legal advisors is not enhanced

by permitting defendants to select from among their advisors that advice which they deem helpful while retaining the cloak of privilege upon that which they deem harmful. It is enough that defendants may use the privilege as a shield. They should not be permitted to use it as a sword.

The District Court was correct in finding that attorney Morley had authority to act on defendants' behalf and did so in sending Exhibit 2-0 to the Trustee's attorney.

C. ADDITIONAL REASONS WHY THE DISTRICT COURT WAS CORRECT IN ADMITTING EXHIBIT 2-0 IN EVIDENCE.

1. Attorney Morley had a duty to make disclosure to the Trustee of matters contained in Exhibit 2-0.

Assuming, arguendo, that attorney Morley was co-counsel for the Trustee of the defendants' bankrupt estates,[20] he had a legal and ethical duty to disclose to

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[20] It is not clear, as Appellants suggest, that attorney Morley was co-counsel for the Trustee of the bankrupt estates of Fred and Ione Stegeman. Attorney Morley testified that what he did in this instance was "for Mr. Stegeman" (Tr. 316). Our record contains no Order appointing attorney Morley as co-counsel for the Trustee. The District Court found that the Trustee's interest was "adverse to that of the defendants" (Tr. 362). Attorney Morley, as counsel for defendants, may have

the Trustee his communication to defendants respecting their continuing crime and fraud.[27] On April 7, 1961, defendants were continuing their concealment of their Cessna aircraft and $36,500.00 in United States

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had an interest in common with the Trustee in obtaining certain facts, but the interests and duties of defendants and their attorney Morley and the Trustee with respect to such facts were adverse. The Trustee is a representative of the creditors and a quasi-officer of the Court, not the bankrupts. His paramount duty is to conserve and advance the interests of the estate. See 11 USC §75; 2 Collier on Bankruptcy, 14th edition, §47.02, pages 1738-1739. Such adverse interests are illustrated by the question regarding a denal of defendants' discharge in bankruptcy because of their fraud, which had already arisen (Tr. 316).

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[27] See 18 USC §3057:

"(a) Any referee, receiver, or trustee having reasonable grounds for believing that any violations of the bankruptcy laws or other laws of the United States relating to insolvent debtors, receiverships or reorganization plans has been committed, or that an investigation should be had in connection therewith, shall report to the appropriate United States attorney all the facts and circumstances of the case, the names of the witnesses and the offense or offenses believed to have been committed. Where one ofsuch officers has made such report the others need not do so."

See ABA Canons of Professional Ethics No. 37:

". . . the announced intention of a client to commit a crime is not included within the confidences which he is bound to respect. He may properly make such disclosures as may be necessary to prevent the act or protect those against whom it is threatened."

See also ABA Canons of Professional Ethics No. 15:

". . . [the] great trust of the lawyer is to be performed within and not without the bounds of law. The office of attorney does not permit, much less does it demand of him for any client, violation of law or any manner of fraud or chicane. He must obey his own conscience and not that of his client."

currency. As co-counsel for the Trustee, attorney Morley could not conceal from the Trustee his communication with defendants about their continuing crime and fraud, of which he had knowledge. He could not sit idly by and allow defendants to continue to defraud their creditors and the Trustee, for whom he was counsel.

Perhaps it should be again noted that Exhibit 2-0 was sent by attorney Morley to the Trustee's attorney, Walter Pendergrass. If, as Appellant suggests, attorney Morley was the Trustee's co-counsel, then any privilege as to such communication is that of the Trustee. The Trustee has made no claim of privilege in this action.

2. Exhibit 2-0 was not a copy of a confidential communication.

Attorney Morley's communication to the defendants, of April 7, 1961, was not intended by him to be confidential. Attorney Morley testified that he had previously promised the Trustee's attorney that he would give him " . . . the pertinent facts on the cases that I was handling" (Tr. 309). Morley further testified that he believed it advisable to send the Trustee's attorney a copy of his letter of April 7, 1961, " . . . because it was a convenient way to send him [the Trustee's attorney] a copy of the same letter, because it said the same thing." (Tr. 309). A communication

made for distribution to persons other than the client is stripped of any attorney-client privilege. *U.S. v. Tellier,* 255 F.2d 441, 447 (CA 2, 1957), cert. denied 358 US 821 (1958); *Leathers v. U.S.,* 250 F.2d 159, 166 (CA 9, 1957); *Himmelfarb v. U.S.,* 175 F.2d 9P4 (CA 9, 1949), cert. denied 338 US 860 (1949); *U.S. v. Shibley,* 112 F.Supp. 734, 741 (DC S.D. Cal. 1953), affirmed 236 F.2d 238 (CA 9, 1956), cert. denied 352 US 873 (1956). Exhibit 2-0 is not subject to the privilege because it was not confidential.

3. The contents of Exhibit 2-0 were obtained from third-party sources.

The contents of Exhibit 2-0 were obtained by attorney Morley from third persons and sources other than defendants. The contents of Exhibit 2-0, coupled with the testimony of attorney Morley (Tr. 306-320), indicate these third-party sources as public records, attorney John Boock (as to whom defendants waived any privilege, R. 9), and others. At no point does attorney Morley state he acquired a particular item of information mentioned in his letter of April 7, 1961, from defendants. He testified that he obtained a great number of facts bearing on defendants' fraud from the Trustee's attorney, Walter Pendergrass (Tr. 316). There is no privilege for such material. *U.S. v. United Shoe Machinery Corp.,* 89 F.Supp. 357, 359 (D Mass., 1950); 8 Wigmore, Evidence, McNaughton Rev., 1961, Sec. 2317.

4. Appellant's reliance upon CONTINENTAL OIL CO. v. U.S., 330 F.2d 347 (CA 9, 1964) is misplaced.

No question was raised in that action of the existence of a continuing crime and fraud on the part of a client. In *Continental Oil,* the privileged memoranda were statements of clients to their attorneys. The matters set forth in Exhibit 2-0 indicate sources other than defendants. At no point does Exhibit 2-0 acknowledge defendants as the source of any of its contents. Finally, *Continental Oil* dealt with communications between attorneys engaged in a common cause whose interests were not adverse. In the instant case, the interest of defendants' counsel, Morley, was adverse to those of the Trustee.

CONCLUSION

Defendants had a fair trial. There is substantial evidence to support the District Court's rulings which are assigned as error. The evidence in support of the jury's verdicts of guilty is overwhelming and uncontradicted. Defendants' assignments of error are not well taken. For these and the further resons set forth in Appellee's Brief it is respectfully submitted that the District Court's Judgments of conviction should be affirmed.

Respectfully submitted,

SIDNEY I. LEZAK
United States Attorney

JACK G. COLLINS
First Assistant United States Attorney

CERTIFICATE

I certify that in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

Date: Third day of January, 1968.

JACK G. COLLINS
First Assistant United States Attorney

APPENDIX

THE GRAND JURY CHARGES:

COUNT I

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

vs. **CR 64-43**

FRED H. STEGEMAN and IONE E. STEGEMAN,
Defendants.

INDICTMENT
[18 U.S.C. § 152]

A. On or about December 15, 1960, involuntary petitions in bankruptcy were filed in the United States District Court for the District of Oregon against defendants FRED H. STEGEMAN and IONE E. STEGEMAN by three creditors of said defendants pursuant to provisions of National Bankruptcy Act; on or about January 18, 1961, said defendants were adjudicated bankrupts by the United States District Court for the District of Oregon and thereafter a Trustee was duly appointed and qualified for the bankrupt estates of Fred H. Stegeman and Ione E. Stegeman.

B. On or about December 3, 1960, in the District of Oregon, defendants FRED H. STEGEMAN and IONE E. STEGEMAN did individually and as agents for each other in contemplation of bankruptcy proceedings against the said Fred H. Stegeman and Ione E. Stegeman knowingly and fraudulently transfer, conceal and remove from the District of Oregon to Nelson, British Columbia, Canada, the following property owned by said defendants:

1. $36,500.00 in lawful money of the United States;

2. Two cashiers checks aggregating in value of $26,598.68 lawful money of the United States;

3. One Glider Trailerhouse, Serial Number 462056568, of a value of approximately $2,500.00; and

4. One 1959 Buick automobile, Four-Door Hardtop, Serial Number 7F2014858, of a value of approximately $2,000.00;

with the intent to defeat the bankruptcy laws of the United States and to conceal said property from a Trustee and creditors of the bankrupt estates of the said Fred H. Stegeman and Ione E. Stegeman; in violation of Section 152, Title 18, United States Code.

COUNT II

A. On or about December 15, 1960, involuntary petitions in bankruptcy were filed in the United States District Court for the District of Oregon against defendants, FRED H. STEGEMAN and IONE E. STEGEMAN by three creditors of said defendants pursuant to provisions of National Bankruptcy Act; on or about January 18, 1961, said defendants were adjudicated bankrupts by the United States District Court for the District of Oregon and thereafter a Trustee was duly appointed and qualified for the bankrupt estates of Fred H. Stegeman and Ione E. Stegeman.

B. From and after December 15, 1960 and continuing until on or about the respective dates as set forth hereafter, defendant's FRED H. STEGEMAN and IONE E. STEGEMAN did, within the State and District of Oregon, knowingly and fraudulently conceal from the creditors and Trustee of the bankrupt estates of Fred H. Stegeman and Ione E. Stegeman certain property belonging to and owned by their said estates, to-wit:

1. Lawful money of the United States in the approximate sum of $4,435.00, which said defendants caused to be delivered to defendants' daughter, Lynn Langmack, at Albany, Oregon, on or about December 10, 1960, and continuously con-

cealed by defendants until discovered by the Trustee on or about May 5, 1961;

2. Lawful money of the United States in the approximate sum of $1,000.00 delivered by said defendants to John Boock at Albany, Oregon, on or about January 1, 1961, and continuously concealed by defendants until discovered by the Trustee on or about April 6, 1961;

3. Lawful money of the United States in the approximate sum of $26,598.68 which said defendants caused to be deposited to a trust account in the Albany Branch of the United States National Bank, Albany, Oregon, on or about January 20, 1961, and continuously concealed by the defendants until discovered by the Trustee on or about April 1, 1961;

4. One Cessna Aircraft, Serial 33716 Model 182, NC5716B continuously concealed by defendants at Lebanon and Springfield, Oregon, until on or about February 26, 1961, and thereafter transferred by said defendants and William and Corda Gaubert to the State and Eastern District of Washington where said aircraft was discovered by the Trustee on or about December 27, 1962;

which property defendants Fred H. Stegeman and Ione E. Stegeman well knew was then and there owned by the estates in bankruptcy of Fred H. Stegeman and Ione E. Stegeman; in violation of Section 152, Title 18, United States Code.

A TRUE BILL.

/s/ Roger W. Cooper
FOREMAN

SIDNEY I. LEZAK
Acting United States Attorney
District of Oregon

/s/ Jack G. Collins
JACK G. COLLINS
Assistant U. S. Attorney

/s/ Rober C. Rose
ROGER C. ROSE
Assistant U. S. Attorney

JOHN A. BOOCK
ATTORNEY AT LAW
TITLE & TRUST BUILDING
ALBANY, OREGON

WAshash 8-8142

April 1,1961

Honorable Estes Snedecor
Referee in Bankruptcy
United States Courthouse
Portland,Oregon

Re: Fred H.Stegeman B 51313
Ione E.Stegeman B 51314

Dear Sir:

On March 8,1961 I was a witness in the above bankruptcy hearings a as I recall, when questioned if I had any records, accounts or pro of the bankrupts in my possession I replied in the negative. At th time there was no question in my mind whatsoever that said answer correct.

During the past two nightsI have wrestled with the above problem, finally last night I came to the conclusion that even though I tho I was technically right in my answer, I feel morally obligated to on my testimony as follows : That I do not have any records,a or property, butthat I do have the proceeds of two cahier's checks sums of $15,000.00 and $11,598.68 - those checks were made payable Pamela Stegeman and Marma Lee Stegeman,respectively, and I believe dated in October 1960. These two checks were delivered to me about 16,1961 and I was requested to set up an educational trust fund fo these two girls. That subsequent thereto I set up a corporation fo that purpose and deposited the money therein and I still maintain control of those funds.

Inasmuch as the checks were in the girls' names and were endorsed the girls, I assumed that the money had been transfered from Fred Ione Stegeman to the girls in October 1960 and that the girls were actual owners as the trust beneficiaries.

I can assure you that it tookconsiderable prayerful thought last n before I clearly saw my moral duty to make this statement . I hope trust that you may understand my position in this matter and that has all been done in good faith.

Respectfully,

John A. Boock

cc:
Walter H.Pendergrass
Attorney at Law
527 Pacific Bldg
Portland,Oregon

Exhibit
Date
Rptr
Date
Clerk

al

John Boock
Te Acct
Citizens Bk., Albany

1st Fed S&L
Albany
(FIMPS)

H Journal)

N) 1/16/61
/60
) (Marna) Ex 1-N)

)

JJ

(Ex 1L) 1/20/61 $10,000

(Ex 1-L) 2/1/61 $10,000

(Ex 1-L, 1-N) 2/2/61
$ 1,852.87

$300 2/6/61 (Ex 1-L)
Langmack (Ex 1-N)

(Ex 1-L) 4/12/61 $21,552.87

(Ex 1-N) 4/12/61 $28,809.33 Trustee

JOHN A. BOOCK
ATTORNEY AT LAW
TITLE & TRUST BUILDING
ALBANY, OREGON

WAbash 8-8142

April 1,1961

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Referee in Bankruptcy
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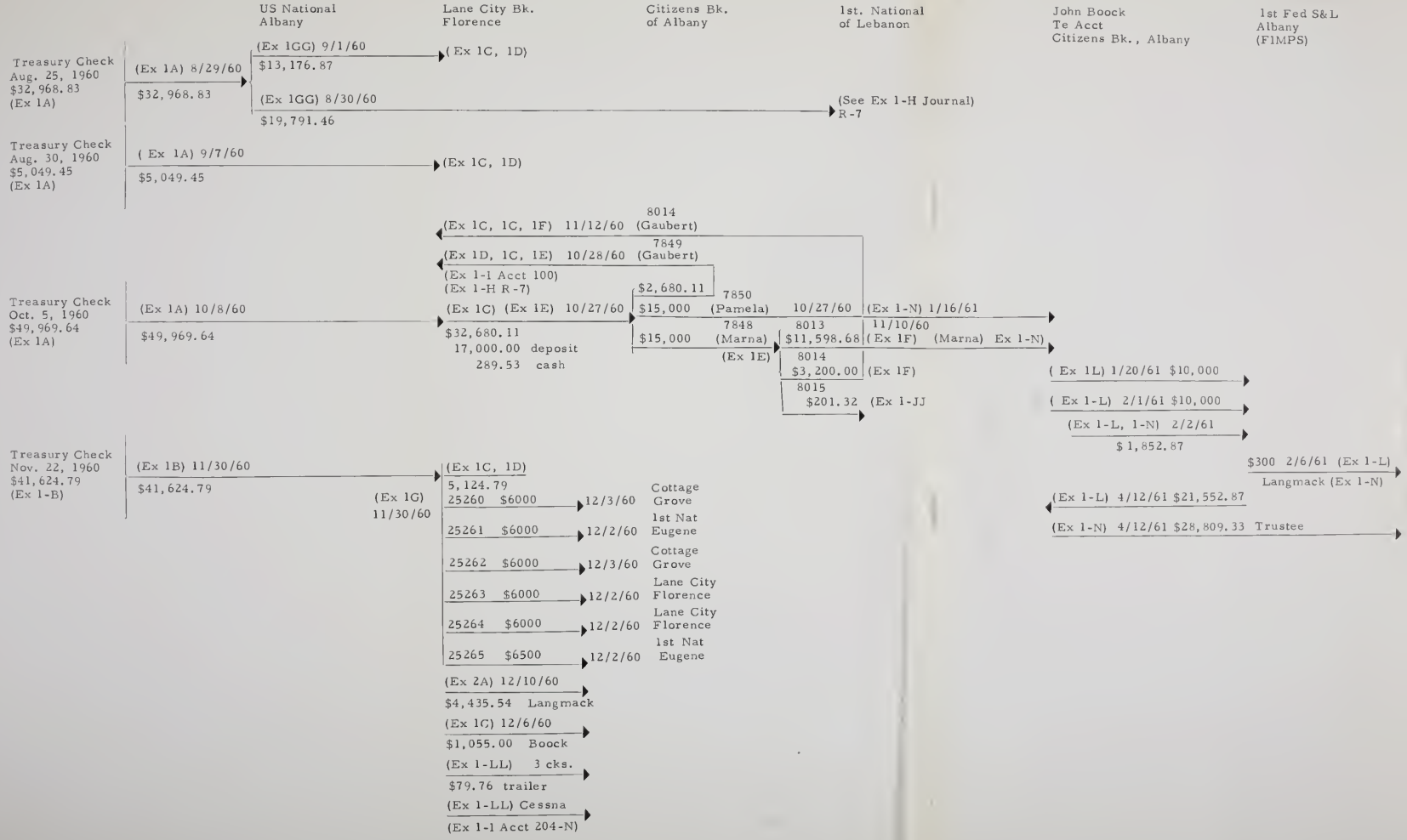
Respectfully,

John A. Boock

cc:
Walter H.Pendergrass
Attorney at Law
527 Pacific Bldg
Portland,Oregon

Exhibit LV
Case CR 6-43
Rptr
Date Clerk


US National Albany
Lane City Bk. Florence
Citizens Bk. of Albany
1st. National of Lebanon
John Boock Te Acct Citizens Bk., Albany
1st Fed S&L Albany (FIMPS)
Treasury Check Aug. 25, 1960 $32,968.83 (Ex 1A)
(Ex 1A) 8/29/60
$32,968.83
(Ex 1GG) 9/1/60
$13,176.87
(Ex 1C, 1D)
(Ex 1GG) 8/30/60
$19,791.46
(See Ex 1-H Journal) R-7
Treasury Check Aug. 30, 1960 $5,049.45 (Ex 1A)
(Ex 1A) 9/7/60
$5,049.45
(Ex 1C, 1D)
8014
(Ex 1C, 1C, 1F) 11/12/60 (Gaubert)
7849
(Ex 1D, 1C, 1E) 10/28/60 (Gaubert)
(Ex 1-1 Acct 100)
(Ex 1-H R-7)
Treasury Check Oct. 5, 1960 $49,969.64 (Ex 1A)
(Ex 1A) 10/8/60
$49,969.64
$2,680.11
(Ex 1C) (Ex 1E) 10/27/60
$32,680.11
17,000.00 deposit
289.53 cash
7850
$15,000 (Pamela) 10/27/60
(Ex 1-N) 1/16/61
7848
$15,000 (Marna)
(Ex 1E)
8013
$11,598.68
11/10/60
(Ex 1F) (Marna) Ex 1-N)
8014
$3,200.00 (Ex 1F)
8015
$201.32 (Ex 1-JJ)
(Ex 1L) 1/20/61 $10,000
(Ex 1-L) 2/1/61 $10,000
(Ex 1-L, 1-N) 2/2/61
$1,852.87
$300 2/6/61 (Ex 1-L)
Langmack (Ex 1-N)
(Ex 1-L) 4/12/61 $21,552.87
(Ex 1-N) 4/12/61 $28,809.33 Trustee
Treasury Check Nov. 22, 1960 $41,624.79 (Ex 1-B)
(Ex 1B) 11/30/60
$41,624.79
(Ex 1G) 11/30/60
(Ex 1C, 1D)
5,124.79
25260 $6000 12/3/60 Cottage Grove
25261 $6000 12/2/60 1st Nat Eugene
25262 $6000 12/3/60 Cottage Grove
25263 $6000 12/2/60 Lane City Florence
25264 $6000 12/2/60 Lane City Florence
25265 $6500 12/2/60 1st Nat Eugene
(Ex 2A) 12/10/60
$4,435.54 Langmack
(Ex 1G) 12/6/60
$1,055.00 Boock
(Ex 1-LL) 3 cks.
$79.76 trailer
(Ex 1-LL) Cessna
(Ex 1-1 Acct 204-N)

JOHN A. BOOCK
ATTORNEY AT LAW
[illegible]
WYdeth 3-8142

April 12, 1961

dergrass, Spackman, Bullivant & Wright
torneys at Law
ific Building
rtland 4, Oregon

RE: Fred H. Stegeman, No. B 51313
Ione E. Stegeman, No. B 51314

tention: Walt Pendergrass

Pursuant to your letter of April 7, 1961, I am submitting the llowing accounting of moneys received and disbursed on the above ter:

1-1-61	Gaubert Payment	$1,000.00
1-16-61	Cashiers check #7850	15,000.00
1-16-61	Cashiers check #8013	11,598.68
2-1-61	Lynn Langmack check	1,852.87
	Total	$29,451.55

BURSEMENTS:

1-18-61	Oregon Corp. Comm. filing fee	$ 20.00
2-6-61	Lynn Langmack Check	300.00
2-22-611	Lynn Langmack check	322.22
	Total Disbursements	642.22
	Balance on Hand	$28,809.33

I have prepared my trustee c'eck in the above amount to the order William Kennedy, Trustee and am enclosing it herewith.

Also, I am enclosing my claim for services in the sum of $350.00. is difficult to put a value on such services I can assure you. I ld never knowingly engage in a comparable matter for a hundred fold at claim.

I appreciate the courtesy and cooperation you have shown me this matter. I have written the Stegemans recommending that they perate with you in bringing this matter to a satisfactory settlement.

Sincerely,

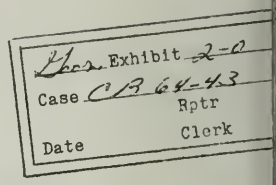
John A. Boock

B/rr
closure
ent to Kennedy

LAURENCE MORLEY WILLIAM R. THOMAS M. MA

MORLEY, THOMAS & ORONA
ATTORNEYS AT LAW
PHONE ALPINE 8-3194
80 E. MAPLE ST.
LEBANON, OREGON

April 7, 1961



Mr. and Mrs. Fred Stegeman
Kline Trailer Park
Nelson, British Columbia

Dear Mr. and Mrs. Stegeman:

It has been some time since I returned from your place, and I promised you that as soon as I could get adequate informa collected together I would forward it to you, and pass alon my suggestions. A lot of things, apparently, have taken p since I left your premises. I will do my best to outline a many things as I can.

First, I told you I would try to investigate and find out h many claims had been filed against you in the bankruptcy pr ceedings and the extent of the claims. To the best of my knowledge only one claim has actually been filed todate. T claim is the claim of the First National Bank in the sum of $34,500.00, plus some interest. No other claims have been filed, but a number of other claimants have written in and intimated that they intend to file. We cannot take any action in regard to any of them until we know exactly what they intend to do.

The Bachmann Brothers are in the process of filing their claim, and I believe that it has been forwarded to the Trus in Bankruptcy. Their claim is in the sum of $19,030.25.

In regard to the Bachmann claim, I have gone over the matt with the Trustee in Bankruptcy and the other attorneys inte osted therein, and am satisfied, and I believe that they are satisfied that we will be able to dispose of this item wit or without your presence. It would be a lot easier with yo presence, but we probably can defeat it anyway, in light of the testimony that you have already given in your depositio plus the other information that we have and can acquire. I would therefore reach the conclusion that the Bachmann clai

f little or no consequence.

Dolan Construction Company have written in indicating that
are intending to file a claim for $25,940.25 and incidentally
Feenaughty Equipment people have also inferred that they are
nding to file a claim.

ve already advised the Trustee in Bankruptcy, and his counsel
these claims are duplicates, and that in addition to that,
s your opinion that the claim is of no greater value that.
000.00. It is either due Dolan, or Feenaughty, but you do
know which. I have explained to him that you agreed to
Dolan .90 cents a yard for the crusher and jaws, but he
not provide the jaws. That you later made a deal with
aughty which would be .70 cents a ton, and then you made
own independent agreement in connection with the jaws.
either way you do not believe that the item would run more
$10,000.00, or $11,000.00.

ave examined the bond with the United Pacific People in
ection with this item, and unless there is some other in-
rotation that I cannot find it would not appear to me that
bonding company has any responsibility on this rental
gation.

Stone Machinery Company have intimated that they are going
ile a claim for $903.00. I do not know a thing about this
I would appreciate some information from you.

Rogers Tire People have sent in a bill, but no claim as
for $17,984.84. According to my understanding these
tires that were put on equipment that went to the Pappe
le, and if for no other reason you should receive some
tional credit from Pappe. No doubt you do owe the tire
, and if there is anything wrong with this particular
unt I would appreciate your giving me further information.

Howard Cooper people have a claim for $809.89. I do not
what this is all about, and if you can give me some
rmation I would appreciate it.

. McEwen has a claim for $7,200.00, or intimates that
would have one. I think that I am spelling the name right,
it may be that I misunderstood it, or do not read the hand-
ing correctly. Please let me know what this is all about.

Mansfield did file a claim for $984.01. It is my recollecti from my conversation with you that you do not owe him anythin It is my understanding that the policy he issued to you did n provide for a premium ratio on it, and you were dissatisfied on it, and you asked that it be cancelled, but nevertheless, he billed you anyway. A little more detail on this would be appreciated.

In examining the correspondence with the Halton Tractor Comp it appears that you owed them in excess of $60,000.00, abou $42,000.00 on the contract, and about $21,000.00 on the mortg It seems that on December 9, 1960, prior to the filing of the bankruptcy proceedings they became panicy over the fact that some of the equipment was being moved, and that they couldnot locate you, and they proceeded to pick up the equipment. Disp your fears that the Bank had something to do with this let m assure you that the bank did not, and they were just as surpri as you were. In fact, they were even surprised to find out they had picked it up before the bankruptcy proceedings start and we just discovered that fact. When they picked it up, app they sold the stuff at some kind of a sale, which is not comp explainable, and claim that you still owe a balance of $43,30 It seems that they only got about $21,000.00 out of the equip We have quite a bit of evidence compiled, plus the letter you written to me which indicates to me that they had more than equate security for their money that was due them. I believe it was admitted that the equipment was worth approximately $ We realize that upon a forced sale it would not bring that m but it ought to have brought enough to pay off the full oblig hence, we are not greatly disturbed about their claim again you. We believe that we can get them to settle that witho asking for a deficiency judgment, and I suspect that they wi not take such steps.

The Pappe claim has not yet been filed, and it is in the a of about $65,000.00. Just why it has not been filed we do n know, and we cannot quite understand their attitude in respe to it. We are going to resist it all of the way, although may take some sort of a settlement.

Of course, United Pacific Insurance Company, on their bond, has an open claim, but as far as I can tell they have not yet had to pay out any of the money, and I doubt if they will have to pay out any money, and under those circumstance

here probably is no obligation to them. There might be
ome other outstanding bills, the only other one we know
owever, is the small bill of Doug Cruise for $305.00.
here may be some others that you might inform me about
f you would, and if you know of them I would appreciate
eing advised so that we can check with the people and get
t cleared up. This is quite important because unless the
eople file their claims in this bankruptcy or have notice
f the bankruptcy so that they can file their claims the
laim will not be discharged in the bankruptc y, and some
ime in the future you may still have to face them regard-
ess of the outcome of this situation.

have outlined to you all that I can about the above claims,
nd all that I know about them. Anything that you have and
an tell me I would be glad to pass on to the Trustee, so
hat proper measures can be taken to protect what assets
here are in the estate.

am intending to proceed against Bond and see what I can
et out of him on your account with him. I am satisfied
can get the $500.00, but if he does not come through
ighty quickly we might get considerably more.

presume you know by now that Johnny Boock contacted the
rustee in Bankrputcy by letter, and also contacted me on
he 5th day of April. He became very frightened because
f his position in this matter, and I might say that he had
ause to be. As far as I am concerned what he did to help
ou and the children was perfectly all right, and I am glad
hat you found someone that you could trust in that respect,
owever, after he was called before the Bankruptcy Referee,
nd put under oath, he was obligated to reveal all of the
acts that he knew about the situation, or otherwise there
ight be some danger of accusing him of a conspiracy to
efraud. Under those circumstances Johnny could have
obably suffered a severe penalty, as well as lose his
icense to practice. He had no other choice but to reveal
he full facts, fully and completely, and to the best of my
nowledge he has done so and is remitting to the Bankruptcy
rustee all of the money that he has under his control, which
understand is around $26,500.00 for the children, and
bout $2,100.00 of other money that was left with him.

I might further say that I am confident that the Trustee in Bankruptcy and his attorney are not going to relax in any degree. I know that they are going to turn the matter over to the F.B.I. in a very short time. The only reason they have not done so is that I have begged them not to do it until you have had a full chance to deliberate and reflect on what you want to do. I know that I have done all that I can to convince them that neither you, nor Mrs. Stegeman are the kind of people who should get involved with the law, especially in a criminal matter. I have asked them to hold off because I thought you would probably be able to arrange to send all of the books in to the Trustee. If you do that that will greatly eliminate a possibility of criminal procedure, but I do not think that they are going to hold out very long.

In addition to that I am confident that they are going to locate the rest of the assets in the estate. I understand that Lyn has already turned over a deed to the house to the Trustee. They have a way of tracing all of the checks and all of the funds, although it takes them considerable time and trouble, and I am sure that they will, and when they do innocent people may get hurt.

When I read this letter over, and when I reflect upon the things that I have told you I find myself in a very confused position. Frequently it does not appear that I am on your side, because I keep telling you to do things which you apparently do not whant to do, but, frankly I want you to understand that I have not asked you to do anything that I did not think that you should do, and the things that I have suggested to you are for your own personal sake. You will find out after a while that I am telling you the absolute facts and that even though it may not appear to be to your present advantage, in the long run, if you do not consider fully what I have been telling you you may have some very disasterous results.

I still repeat, I think that you should get the books to t Trustee immediately. I will accept them for you if you wan to send them to me. I think you should make a full report where the other assets are just as soon as possible, and I will forward those for you if you want me to. I further

state that I think that the best thing for you to do is for you to personally appear back in Oregon, and get the matter thrashed out once and for all. If you come back you will not suffer any criminal responsibility, although you may suffer considerable financial set back, but I do not think it will be any worse than you are going through now.

Please remember you are not a man without friends. You have a multitude of them. I know of no one who thinks that you are doing the right thing for yourself, or your family. All of your friends will still rally for you if you come back. If you cannot see your way clear to do that please do the other things that I have suggested.

I dictated this letter a few days ago, but we were behind in the typing in the office, in the meantime I have requested the Trustee not to proceed through the F.B.I. until I have had a chance to hear from you. They have been very kind to me in this respect, and I am also confident that they have no desire to be punative about this, however I am sure they will take some action by Monday or Tuesday of next week, that is the 17th or 18th, unless you and I give them some reasurance that it will not be necessary.

Sincerely yours,

MORLEY, THOMAS & ORONA

By:

Laurence Morley

LM:k

BC: Walter Pendergrass

EXHIBIT 1 — INTERVIEW IONE E. STEGEMAN DATE 12/13/62 AT NELSON, B.C. CANADA

Mrs. IONE E. STEGEMAN was interviewed in her mobil home at Kline's Trailer Court at the southern outskirts of Nelson, British Columbia, in the presence of Corporal CHARLES PEEVER, Royal Canadian Mounted Police, Detachment of Nelson, B. C.. Mrs. STEGEMAN was advised that the interview would concern the alleged concealment of assets in relation to the possible violation of the National Bankruptcy Act, such allegations involving her and her husband FRED H. STEGEMAN. She was further advised that she did not have to furnish any information, and that any information so furnished by her could be used in a court against her and her husband, and that she had the right to consult an attorney.

As having been instructed by Acting U. S. Attorney SIDNEY I. LEZAK of Portland, Oregon, it was pointed out to Mrs. STEGEMAN that prosecutive action was being considered in this case, and that this interview might be her last opportunity to make a complete disclosure. It was also pointed out to her that it was Mr. LEZAK's opinion from a study that the extradition treaty between the United States and Canada would apply in this case.

At the beginning of the interview and at two or three times throughout the interview, Mrs. STEGEMAN stated that she was willing to cooperate; however, she further pointed out that she has previously furnished all the infor-

mation that she knows to "the attorneys and those other men" who had previously called upon her and her husband in Nelson, B. C., several months ago to interview her concerning this matter. At each such occasion it was explained to her that the interview would have to be voluntary on her part, and that the interview was being conducted to give her an opportunity to make a complete and full disclosure.

Mrs. STEGEMAN stated that she and her husband came to Canada in the early part of December, about the third or fourth day, 1960, and at the time, they came with the intention of looking for work. They had never been in this area before, and at the time, they did not know how long they would stay. Mrs. STEGEMAN said that Mr. STEGEMAN was interested in working in mining, farming, construction work, or anything else he could find employment in. She said after Mr. STEGEMAN was able to find employment and began to work, he sent word to Mr. WILLIAM GAUBERT that if he would come on up to Nelson, they were sure that he would be able to find employment. She added that Mr. and Mrs. GAUBERT came to Nelson the following year, the exact date she could not recall, but to the best of her recollection, it was probably some time in March, 1961.

At this point, Mrs. STEGEMAN said they had got all this information before and they had trumped up a lot of charges against us. However, when asked if she wished to continue the interview, she replied in the affirmative.

At the time they came to Canada, she said they brought with them their 1959 Buick car, the trailer house in which they are presently residing, and their personal effects. She said they also brought with them about what money they thought they would need to carry them through the winter. However, she declined to state specifically how much cash they had in their possession. Since they have resided in Canada, she said Mr. STEGEMAN has been employed most of the time, and that his work has been as a heavy-duty mechanic at various places for various companies including Celgar Industries of Castlegar, British Columbia, and Finney Tractor Company of Nelson. She said that he worked wherever he could.

In regards to their first knowledge of the bankruptcy proceedings, Mrs. STEGEMAN said they first knew of the bankruptcy proceedings when they received a notice in the mail addresed to them at Nelson, British Columbia, during the latter part of January, 1961, approximately two months after their arrival in Nelson. She said that although she does not remember for sure, she believes that this letter was mailed from the Bankruptcy Court in Oregon. At least she said it was a typed-form letter addressed to them, and she added that neither she nor her husband has ever been served with any kind of notice personally.

She said that it is their intention and desire to continue living in Canada, and that they have become landed immigrants in Canada, and that "everything has been latched on to by

those people down in Oregon, and there is nothing to go back to Oregon for."

She said that they have four children, all daughters:

Mrs. ELIZABETH LYNN LANGMACK, Albany, Oregon;

Mrs. SUZANNE PENNY, Nelson, British Columbia;

MARNA STEGEMAN, in school at Nelson;

PAMELA STEGEMAN, in school at Nelson.

Mrs. STEGEMAN said that the three younger girls moved to Nelson and have resided there most of the time that Mrs. LANGMACK has continued to reside in Albany, Oregon, but has on three or four occasions visited with them in Nelson. As to the time of the arrival of the three girls in Canada, Mrs. STEGEMAN said they did not come to Nelson when the parents moved there in early December, 1960, but that the girls had remained behind at their home in Oregon until Christmas time of the same year, at which time they came to Nelson and continued to live there until this date.

Mrs. STEGEMAN said that neither she nor her husband heard from the three girls (their daughters) that a United States Marshal or any other representative from the United States Government was attempting to contact them or that bankrupcy proceedings were being filed against them. In fact, she said they did not learn any such information

until it was mailed to them as mentioned above during the latter part of January, 1961. In fact, she said when she and her husband left home in November, they took off in the car pulling the trailer looking for work and they traveled in Washington, Oregon, and Idaho, prior to going to Nelson, British Columbia. She said that she recalls that their time of departure was shortly after November 14, 1960, because she said she was a hostess for a UNICEF dinner at her home on or about November 14, 1960, and that it was shortly thereafter that she and her husband left home in Oregon looking for work. She said she went along with her husband helping him to drive, and throughout their travels in Washington, Oregon, Idaho, and into British Columbia, their children did not know their whereabouts. She said she does not now remember the specific date, which they advised their daughters where they were, but it was some time in December and shortly before the daughters left their home in Oregon to come to British Columbia to live with them.

She denied that their daughters in anyway contacted them to tell them about the bankruptcy proceedings because she said her daughters did not know their whereabouts.

In regards to the airplane, a Cessna 182, which had belonged to her husband, she said that Mr. STEGEMAN sold this aircraft to WILLIAM GAUBERT in about March, 1961. To describe this sale or transaction, she said that Mr. STEGEMAN had sold some heavy construction equipment to GAUBERT while were residing in Oregon, and then Mr. STEGE-

MAN had borrowed back from GAUBERT a caterpillar tractor to be used on a construction job. While Mr. STEGEMAN was using this "cat" on a job in Oregon, he broke the cat in half and then as payment for the use of the equipment and the damage done to it, Mr. STEGEMAN turned over to WILLIAM GAUBERT the instant airplane.

Mrs. STEGEMAN said that they did not get the title for the instant aircraft until after they had moved to Canada, and after they had been declared bankrupt. She explained that the payments had been completed on this aircraft at about the time they left Oregon, and it took two or three months at least until the title was sent to them in Nelson. Because of this delay in receipt of title, she said it was never turned over to GAUBERT at the time the aircraft was turned over to him.

After WILLIAM GAUBERT and his wife moved to Nelson in March, 1961, Mrs. STEGEMAN said that her husband advised GAUBERT that he would like to use the aircraft, and an agreement was reached between GAUBERT and STEGEMAN that STEGEMAN could use the aircraft in the Nelson area if he would give it the necessary care and upkeep. Mr. STEGEMAN had the aircraft flown from Oregon to Nelson with the pilot landing at Trail, B.C., and clearing Canadian customs and immigration at that port. After the plane arrived in Nelson, she said her husband went to see the Canadian officials and was told that because he was now an immigrant in Canada, he could not keep the aircraft in Canada on a six-months permit; therefore, she said because

the cost of bringing it into Canada on a permanent basis was prohibitive, it was decided that the aircraft should be returned to the United States so she said it was taken right back. In regards to the identity of the person, who had flown the aircraft from Oregon to Nelson, Mrs. STEGEMAN said that she does not remember the man's name, but that they had had a man ferry it into Nelson. In regards to the time and conditions in which the aircraft was returned, she said that it was about one or two days after the plane had arrived in Nelson that it was flown back into the United States, and to the best of her recollection, the date of departure was postponed because of weather. She said her husband FRED STEGEMAN flew the aircraft from Nelson back into the United States and checked in at Spokane, Washington. When asked where the aircraft was then taken or where the aircraft is located at the present time, Mrs. STEGEMAN said "I don't know what he did with it after landing at Spokane." When asked if she actually did not know what he had done with it or whether she did not care to say what he had done with it after landing at Spokane, her reply was "I cannot answer that."

Mrs. STEGEMAN said that they still owe on the house trailer, and that it is financed through the Commercial Credit Corporation of Portland, Oregon, to which company they are now and have been since moving to Canada making payments on a monthly basis. She said these payments are made by check or money order, and that the money order is always of a United States denomination, usually obtained from a bank or a Post Office. In

fact, she said that she has made several trips personally to Spokane, Washington, at which time she has obtained these money orders for payment on the trailer house.

Mrs. STEGEMAN said that Mr. STEGEMAN is now working on a logging job about 12 miles out of Burton, B. C., for the Celgar Company, and that he comes home only on week ends. She said that the place where he is employed at this time of year is inaccessible by automobile because of road and weather conditions. She added that he would have no additional information to furnish other than what she is able to and is furnishing in this interview.

At this point, Mrs. STEGEMAN was advised that information had been received to the effect that she had written a letter stating that her husband has a deteriorated mental condition, and she was asked to comment on this. She stated that he has worried so much about his backsets and the hardships that have been brought to him by the people in Oregon, that she believes that he has approached a nervous breakdown. She admitted that she did not think he had actually reached the point of a nervous breakdown, but that he had closely approached this. However, she said for the past couple of months he has been a little better because his health in general has been better and because he has been able to get out and work for a living. She said he was quite sick this summer with a bone infection in his right arm, to the extent he was unable to work during the months of June, July, and August. Then he worked for one month and was off

again for a month or so due to a back injury, which he said amounted to a slit disk.

She said that her husband has worked so hard and so long in his life that he cannot quit working, and when he is unemployed, it greatly concerns him. She added that he has a good keen mind, and she does not think that in anyway he is mentally ill, but that because of the pressures that have been placed upon him during the last year or two, he has had a severe nervous condition. She said that he has been in need of medical help, but she very much dislikes mentioning anything about their troubles down in Oregon because it seems to depress him to the extent that he becomes greatly worried about it again, and at such times, she wonders about a nervous breakdown. When asked if he has ever consulted a psychiatrist, she replied in the negative. She said that she does not think that he is actually in need of a psychiatrist, but that he needs to forget his troubles and he is happier when he is doing something.

Mrs. STEGEMAN said "We have a lot of equipment down there in Oregon, which was almost paid for at the time we left to look for work, and after we left there, they came in and took it away." She said by this statement she was referring to the fact that it was their desire to continue in the construction business at the time they left Oregon, and that they intended to go elsewhere to look for work inasmuch as there was no work in their own immediate vicinity, and after finding work, they intended to go back and get their equipment and take it to the new job. However, before they could

become thus employed and settled she said that "They" took all of their equipment without authorization, and they, the STEGEMANs, were unable to put it to further use. She said when they first came into Canada, they came on a visitor's permit, and they applied in the latter part of January to become landed immigrants, and further that they took their physical examinations to become landed immigrants after they heard they had been declared bankrupt. She added that when they came to Nelson, they still had the equipment in Oregon, and they wanted to bring it up into Canada to use it up there, but that they could not move it until they had a job to move it to, and then the equipment was taken away from them before they could move it and use it in this area. She said that it was their intention to move it to this area to put it to use in order to be able to finish paying for the equipment.

At this point, Mrs. STEGEMAN indicated that she had furnished all the information she decided to furnish, and that she had no desire to have the interview pursued further. She stated that while she and her husband were living in Nelson and her four daughters were still living in Oregon, that the daughters were greatly harassed by the authorities in that area, that the police and everyone else seemed to be against them, and that whenever the daughters left the home unattended that someone broke into the place on several occasions ransacking the house and causing a great deal of disturbance. She added that the harassment of her children was extremely disturbing and uncalled for, and she had no desire to return to the United States to live. She added that it now appears that the United States

authorities are trying to come to Canada and make things so undesirable for her and her family that they will not be able to live there either. She said that it appears as though the United States authorities plan to come to Canada and arrest her and her husband like common criminals and return them to Oregon to face charges.

The following description was obtained through observation and interview:

Name	Mrs. IONE E. STEGEMAN
Maiden Name	RODMAN
Race	White
Sex	Female
Nationality	American (landed Canadian Immigrant since early 1961)
Height	Approximately 5'6"
Weight	Approximately 140
Hair	Black
Eyes	Brown
Marital Status	Married, wife of FRED HENRY STEGEMAN
Remarks	Because of her apparent unwillingness to furnish further information, and because most of the descriptive information concerning this woman has already been obtained, no further effort was made to obtain any further description.

EXHIBIT 1 — INTERVIEW FRED STEGEMAN DATE 2/20/63 AT CASTLEGAR, B.C., CANADA

Mr. FRED HENRY STEGEMAN was located at his place of employment with Celgar, Ltd., near Castlegar, British Columbia, Canada, and he was requested to come to the office of the Royal Canadian Mounted Police in Castlegar for interview, which he did.

At the beginning of the interview, STEGEMAN was advised of the nature of the interview, that it was to give him an opportunity to make a full and complete disclosure of all assets and liabilities in regards to an involuntary bankruptcy case that had been filed against him and his wife in the State of Oregon. He was advised that he did not have to make any statements, and that any information that he did furnish could be used against him in a court of law. He was also advised that he had the right to consult an attorney.

STEGEMAN said he was very much willing to cooperate all he could in furnishing all the information he knew relative to the above mentioned bankruptcy. He said he had furnished all the information he knew on previous occasions to attorneys who he thought represented the Trustee in Bankruptcy, but he was willing to furnish it again.

When asked if he recalled the disposition of a United States Government check in the amount of about $36,000.00 or $36,500.00, made payable to him a short while prior to his departure from his home in Oregon in the fall of 1960, STEGEMAN said he did not recall

any such check; however, when told that written records reflect such a check was issued to him at that time, and that said check had been cashed, STEGEMAN replied that the money from that check was "spent paying bills" which had been incurred through his construction business. He added that some of it was spent by him looking for work. He said he does not now recall just how much, but that he and his wife spent well over $6,000.00 just travelling around looking for work after receipt of the above mentioned check, and that most of that was spent in December, 1960.

It was pointed out to STEGEMAN that records also indicate when the United States Government check, in the amount of $36,500.00, was cashed in the fall of 1960, that five (5) cashier's checks, in the amount of $6,000.00 each, and one (1) cashier's check, in the amount of $6,500.00, were obtained, and he was asked as to the disposition of those

STEGEMAN said he and his wife were gone from home for about one and one-half months in November and December of 1960, looking for work, and they have never returned to Oregon; they eventually settled in Nelson, British Columbia, Canada, where they have continued to live to this time. He said he has been working most of the time since they settled in Nelson in about December, 1960. He said he has been working the past few days at the main plant of the Celgar, Ltd., located about four miles northwest of Castlegar, British Columbia, but on February 21, 1963, he planned to return to work at the Celgar logging camp near Burton, British Columbia.

checks. His reply was that two (2) of those checks were cashed, and the cash derived from them was used to pay two (2) men to whom he owed money; he added that he does not now recall their names. The remainder of the four (4) above mentioned checks he said, were subsequently cashed and the money used to pay to other people to whom he owed money, and he does not recall any of their names. He added that all of the recipients were then right around the Lebanon, Oregon, area. He also added that for some of those debts to be paid, he left the money with his daughter, LYNN, to pay, but again he did not recall how much nor to whom it was to be paid, and some of the debts he paid before he and his wife left Lebanon.

In regards to the above mentioned six (6) cashier's checks, STEGEMAN said he does not recall the circumstances of cashing those checks, but he does recall cashing a couple of them himself, and Mrs. CORDA GAUBERT may have cashed one or two of them because he recalls asking her to do so. In explaining this, STEGEMAN said Mrs. GAUBERT took care of all the time records for him while they were working at Whitaker Creek (in Oregon), and she also took care of the banking for him as well as running a lot of errands and other odd jobs. He added that he was not with Mrs. GAUBERT at the time she cashed those checks, and he does not know who was with her. He also added that Mrs. GAUBERT did not keep any of the money from those checks she cashed. He said, "I got it all from her".

He said he had no explanation why, when those checks were cashed, the proceeds of the

checks were obtained in $50.00 and $100.00 currency, except that he "wouldn't have so many small bills". He said he had a checking account in the Lane County (Oregon) Bank at that time, but because the job was finished at that time, he knew he was going to leave the area, so he paid off the people he owed money to, paying them in cash, and he saw no need to further use a checking account. He added, "I've done it that way lots of times", indicating that he meant he had paid off his debts in cash at the conclusion of a job in a specific area.

STEGEMAN admitted that he might have taken $400.00 to $500.00 of the $36,500.00 check with him into Canada when he and his wife moved to Nelson, British Columbia. He added, "That's about all I had in my pockets when I got up here". He also admitted he had one other check in the amount of $2,000.00 paid to him by a Mr. GILE, owner of a plywood company in Sweethome, Oregon. This was cashed in the United States, but he does not recall where.

In regards to the Cessna 182 airplane which he had owned in Oregon, STEGEMAN said as far as he was concerned, the plane belonged to the GAUBERTS; they had a Bill of Sale for it, this Bill of Sale having been given by STEGEMAN to WILLIAM GAUBERT in about July of 1960. He explained that at the time of the issuance of the Bill of Sale to GAUBERT, STEGEMAN had not finished paying for the plane, but to the best of his recollection he finished making the payments on the plane in about October of 1960, and he vaguely recalls that he received the Registra-

tion, which comes in three copies, at the time he made the final payment in about October 1960. However, he does not now recall what happened to the Registration. He believes he left it in the STEGEMAN home in Lebanon. He has not seen it since he left Oregon, and he does not know its whereabouts.

In explaining the transfer of ownership of the airplane to GAUBERT, STEGEMAN said he had sold GAUBERT some heavy duty road construction equipment in the form of D-8 cats, trucks, and miscellaneous equipment during about the last part of February, 1960. He added that he was not sure of the year, but he believes it was 1960. Then later in that same year, STEGEMAN borrowed that equipment back from GAUBERT, rent free, with the understanding that STEGEMAN would return the equipment in a good state of repair. However, in about July or August of 1960, STEGEMAN returned the equipment to GAUBERT, but because he did not have the money to have the equipment repaired he had to return it in worse condition than what he had agreed to return it.

He said one cat had a broken case and other parts that were in need of repair, amounting to a repair bill of about $6,000.00. STEGEMAN said he told GAUBERT he was unable to fulfill his agreement in repairing the equipment as he had promised to do, so he told GAUBERT he would turn over to him the above mentioned airplane, and that GAUBERT might be able to sell it for enough money to take care of the needed repairs to the heavy duty equipment. This was agreeable with

GAUBERT, and it was at this time that GAUBERT was given the Bill of Sale for the plane.

STEGEMAN said he had tried to sell the airplane, but without succes. He added that he had attempted to sell the aircraft at the Troutdale, Oregon, airport.

STEGEMAN said when the airplane was brought to Nelson, British Columbia, he rented it from the GAUBERTs. He said he never knew CHARLES HAMLIN, but he vaguely recalls that it was HAMLIN who flew the plane from Oregon to Nelson; however, he does not recall who arranged for it to be flown to Nelson by HAMLIN, but it is his opinion that WILLIAM GAUBERT did. At that time, to the best of his recollection, GAUBERT was living in Pasco, Washington, and he vaguely recalls phoning GAUBERT from Nelson to Pasco, at which time he asked GAUBERT if he could rent the plane. He said he now believes the plane, at that time, was in Pasco, rather than in Oregon. He added, "At least that's what GAUBERT told me".

STEGEMAN said he wanted to use the plane to go from Spokane, Washington to Billings, Montana, and back to Spokane, but he never did make the trip. He explained the reason for his intended trip was to go to Billings to talk to a man who reportedly owned some mines in Canada, because STEGEMAN was interested in purchasing those mines. After he made arrangements to obtain GAUBERT's plane, STEGEMAN said he learned the man no longer lived in Billings, so he decided not to make the trip.

By this time he said he had the plane in Nelson, having been flown there by HAMLIN, so STEGEMAN flew the plane from Nelson to Felts Field, Spokane, Washington. He does not recall the date, but he said about February 21, 1961, could have been the date of that flight, and he would have to consult the flight plan for the exact date. After flying the plane to Spokane, STEGEMAN said he turned the plane over to a party whom he knew only as "DOC" TESTER who was going to use it. He added that "DOC" TESTER later told him that he had used it, but did not give details what he had used it for, where he had flown in it, or what he had ultimately done with the airplane. He added. "He took off in the plane at Spokane's Felts Field, and that's the last I saw of it". He also said "DOC" TESTER later told him he had left the plane in Spokane, but that STEGEMAN did not go to Spokane to see. He added, "As a matter of fact, I don't believe I told GAUBERT where it was; I just lost interest in everything".

According to STEGEMAN, "DOC" TESTER was also interested in the mines in Canada that were owned by the man who reportedly lived in Billings, Montana, and TESTER was supposed to live in the area of Metaline Falls, Washington. He said he knew no more about the man. STEGEMAN admitted that TED TESTER is married to a sister of Mrs. STEGEMAN, and that they live in Spokane, Washington, but that TED TESTER is not identical with "DOC" TESTER, and to the best of his knowledge there is no relationship between the two men.

STEGEMAN said he did not know the instant airplane had been placed in a hangar in Colville, Washington, and that if it were so placed there, he had nothing to do with having it put there.

STEGEMAN related that at times he was in need of cash while he was on the road contracting business in Oregon, and on some such occasions, he sold some of his equipment. He added that in about February, 1960, he sold three wagon air drills, fully automatic, each being valued at about $8,000.00, and he sold all three for about $5,500.00 to GEORGE M. PHILPOT, Portland, Oregon, because he needed the money. He added that was the reason why he made such a cheap sale of equipment to GAUBERT.

Concerning the setting up of a Trust Fund for his daughters, STEGEMAN said he had an attorney by the name of Mr. BOCK or BACK, of Albany, Oregon, set up a Trust Fund for the three youngest daughters for their education. He said he does not recall when it was set up for them, but it seems like it was about the time he and his wife left Oregon.

STEGEMAN explained that about ten (10) years earlier, he had set up a Trust Fund for their eldest daughter, whose name is now LYNN LANGMACK, in the amount of about $5,000.00 with a Savings and Loan Association in Portland, but after awhile, he became in need of money and borrowed money from that Trust Fund with the intention of repaying it; however, they never did pay it back. Be-

cause they had taken her Trust Fund from LYNN, he said they turned over to her their house in Lebanon, Oregon, along with some other real estate property in Lebanon, but he has since understood that the bankruptcy court took all of that from her.

As to the Trust Funds for the three younger girls, STEGEMAN said he does not recall the amount for each, nor the total amount for all three, but he does recall turning over to Mr. BOOCK some cashier's checks on the bank in Albany, Oregon, the name of the bank he does not now recall. He said this was definitely done before he and his wife received any notice of the bankruptcy proceedings that had been filed against them. He said he does not recall how they first learned of the bankruptcy, but he believes they first learned of it in a letter mailed to them in Nelson from the bankruptcy court. He added that he does not believe his daughters knew of the bankruptcy action until after they moved to Nelson during the winter of 1960-1961, and learned of it at the same time the parents learned.

STEGEMAN said the two (2) cashier's checks, which were turned over to Mr. BOOCK for the purpose of setting up a Trust Fund for the three girls, were dated in about October, 1960, and the two checks were to be split between the three girls who were still in school. He said he believes he sent those two (2) checks during the last of December, 1960, or the first of January, 1961, to Mr. BOOCK, and he is inclined to believe it was in the last part of December, 1960.

According to STEGEMAN, he had plans that he could borrow on the $26,598.68 that was being placed into the Trust Funds for the three girls, and by borrowing on that, he would never actually have to remove all of it. He said the intended borrowing would be to make payments on debts which he owed. At that time, he said he had good prospects of getting good work on the construction of a natural gas pipeline extending from Canada to California and entering the United States near Creston, British Columbia, Canada. He explained that when he and his wife first came to Canada, he was trying to find work, and he had an excellent prospect of getting employment that would give good pay on that pipeline construction near Creston, British Columbia, but in about the last of January or the first of February, 1961, he received notice of the involuntary bankruptcy that had been filed against him in Oregon. When he received that information, he said he just dropped all efforts to get the pipeline job and returned to his new home in Nelson, where he had been living. He said he had spent November and part of December, 1960, in the Creston area awaiting employment.

STEGEMAN said he never, at any time, had any intentions of concealing funds from his creditors, and "If they had left me alone, I'd have been back in Lebanon about mid-January or the last of January with the money to pay my creditors". He added that he had arranged for financial backing at some "place out of Spokane" in order to enable him to pay off all his creditors, but when the bankruptcy was filed against him, he gave up on that plan. He

refused to give the name of the person or institution or even the name of the town out of Spokane where he had arranged to obtain the financial backing.

He said he does not recall any United States Government check in the approximate amount of $49,000.00 without reviewing his financial record books for the operation of his construction company. However, he said this money could have been used to obtain cashier's checks for his daughters' Trust Funds.

STEGEMAN said he did not reply to the letters written on or about June 1, 1961, and December 19, 1961, by Mr. PENDERGAST, the attorney for the Trustee in this bankruptcy case, although he acknowledged receiving them because he had lost all interest. He added, "If they'd have left us alone, we'd have paid the money". He said he plans to pay off all the debts he owes some day, but he does not know how he will do it.

The following description was obtained through observation and interview:

Name	FRED HENRY STEGEMAN
Race	White
Sex	Male
Nationality	American, now a landed Canadian Immigrant
Age	49 years
Born	May 16, 1913, at Bickelton, Washington

Height	5' 6½"
Weight	156 lbs.
Hair	Gray, formerly dark brown
Eyes	Brown, wears glasses
Education	High School Graduate
Parents	Deceased
Wife	IONE E. STEGEMAN
Residence	Kline's Trailer Court, Nelson, British Columbia
Employment	Heavy equipment operator and mechanic

DEFENDANTS' REQUESTED INSTRUCTION NO. 15

You are instructed that inasmuch as defendants were resident in Nelson, British Columbia, Canada, autside of the jurisdiction of the Bankruptcy Court at the time of the filing of the Petition for Involuntary Bankruptcy against them, and inasmuch as there was no personal service on either of the defendants, only in rem jurisdiction of the bankrupt estates was acquired by the Court. Therefore defendants had no duty to personally disclose assets or to personally attend Meetings of Creditors; rather, defendants were required only not to conceal assets within the State of Oregon, and even this limited duty did not arise until the defendants acquired actual knowledge of the bankruptcy proceedings. *EDWARDS v. U.S.* (CA 9, Wash. 1959) 265 F2d 302. *RACHMIL v. U.S.* (CA 9, 1930) 43 F2d 878, cert. den. 283 U.S. 819, 51 S. Ct. 344, 75 L. Ed. 1434.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA

v. **CR 64-43**

IONE E. STEGEMAN,
defendant.

On this 24th day of May, 1967 came Jack Collins the attorney for the government and the defendant appeared in person and by counsel, Louise Jayne.

It Is Adjudged that the defendant has been convicted upon his plea of not guilty and a verdict of guilty of the offense of knowingly and fraudulently transferring, concealing and removing from the District of Oregon to Nelson, British Columbia, Canada certain property, with intent to defeat the Bankruptcy laws of the United States and to conceal said property from a Trustee and creditors of the bankrupt estate, in violation of Title 18, United States Code, Section 152 as charged in count I; and knowingly and fraudulently concealing from creditors and Trustee of the bankrupt estate certain property belonging to and owned by said estate, which property defendant well knew was then and there owned by the estate in bankruptcy, in violation of Title 18, United States Code, Section 152, as charged in count II of the Indictment.
as charged

and the court have asked the defendant wheth-

er he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of one (1) year and fined the sum of $5,000.00 on count I of the Indictment.

Imposition of sentence on count II of the Indictment is hereby suspended and the defendant placed on probation for a period of four (4) years. Such period of probation to follow release from imprisonment imposed on count I and upon the conditions of probation contained in Probation Form No. 7, as adopted by the Order of this Court entered August 4, 1964 and the special condition that the defendant cooperate fully with the Trustee in Bankruptcy and all other bankruptcy officials in an effort to locate all the assets of the bankrupt estate, including cash.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ ROBERT C. BELLONI

United States District Judge.